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5–24–06 Wednesday
Vol. 71 No. 100 May 24, 2006

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, June 13, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Proclamation 8020 of May 19, 2006

National Hurricane Preparedness Week, 2006

By the President of the United States of America

A Proclamation

During National Hurricane Preparedness Week, private organizations, public officials, and government agencies will highlight the preparations necessary for the new hurricane season that begins on June 1.

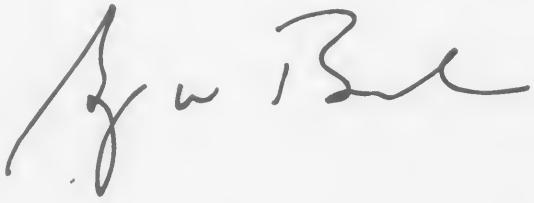
Last year, a record number of hurricanes caused unprecedented devastation across an entire region of our country. Our citizens along the Gulf Coast demonstrated their strength and resilience, and individuals across America revealed their compassion and resolve by opening their hearts, homes, and communities to those in need.

After these storms, Federal, State, and local governments have worked to enhance our Nation's ability to respond to large-scale natural disasters. The Federal Government has conducted an extensive review of preparedness and response efforts, and actions are being taken at all levels of government to improve communications and strengthen emergency response capabilities.

To help individuals, families, and businesses prepare for the future, the Department of Homeland Security provides checklists and information on natural disasters and other threats at ready.gov. By working together, government, private entities, and civic and charitable organizations can help increase preparedness for this year's hurricane season.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2006, as National Hurricane Preparedness Week. I call upon government agencies, private organizations, schools, media, and residents in the coastal areas of our Nation to share information about hurricane preparedness and response to help save lives and protect communities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–4868
Filed 5–23–06; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Title 3—

The President

Proclamation 8021 of May 19, 2006

National Maritime Day, 2006

By the President of the United States of America

A Proclamation

The United States Merchant Marine plays an important role in ensuring our national security and strengthening our economy. As we celebrate National Maritime Day and the 70th anniversary of the Merchant Marine Act, we pay tribute to merchant mariners and their faithful service to our Nation.

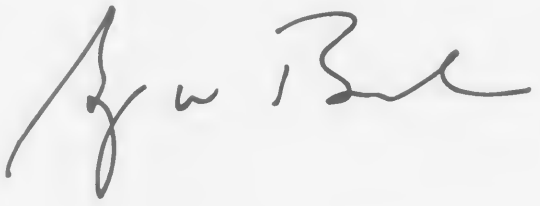
Since 1775, merchant mariners have bravely served our country, and in 1936, the Merchant Marine Act officially established their role in our military as a wartime naval auxiliary. During World War II, merchant mariners were critical to the delivery of troops and supplies overseas, and they helped keep vital ocean supply lines operating. President Franklin D. Roosevelt praised these brave merchant mariners for persevering "despite the perils of the submarine, the dive bomber, and the surface raider." Today's merchant mariners follow those who courageously served before them as they continue to provide crucial support for our Nation's service men and women. America is grateful for their commitment to excellence and devotion to duty.

In addition to helping defend our country, merchant mariners facilitate commerce by importing and exporting goods throughout the world. They work with our Nation's transportation industry to share their valuable skills and experience in ship maintenance, navigation, and cargo transportation. This past year, the good work and compassion of merchant mariners also played an important role in hurricane relief efforts. Ships brought urgently needed supplies to the devastated areas, provided assistance for oil spill cleanup, generated electricity, and provided meals and lodging for recovery workers and evacuees.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by joint resolution approved on May 20, 1933, as amended, has designated May 22 of each year as "National Maritime Day," and has authorized and requested that the President issue an annual proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 22, 2006, as National Maritime Day. I call upon all the people of the United States to mark this observance by honoring the service of merchant mariners and by displaying the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–4869
Filed 5–23–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0039]

Pine Shoot Beetle; Additions to Quarantined Areas; Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by designating the State of Wisconsin, in its entirety, as a quarantined area based on the detection of new pine shoot beetle infested areas in the State, as well as its decision to no longer enforce intrastate movement restrictions. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: This interim rule is effective May 24, 2006. We will consider all comments that we receive on or before July 24, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0039 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 APHIS–2006–0039, 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 APHIS–2006–0039.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During "shoot feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), larch (*Larix* spp.), and spruce (*Picea* spp.) are not hosts of PSB.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, the State of Wisconsin has contained nine counties designated as quarantined areas in the regulations. However, surveys [1] conducted by State and Federal inspectors have revealed that additional areas in the State of Wisconsin are infested with PSB, and the State has notified APHIS that it no longer wishes to enforce a quarantine and regulations on the intrastate movement of regulated articles within its borders. Therefore, we are amending § 301.50–3(c) to designate the State of Wisconsin, in its entirety, as a quarantined area.

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this interim rule, any regulated articles to be moved interstate from the State of

[1] Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Wisconsin must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

This emergency situation makes timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. In § 301.50–3, paragraph (c), the entry for Wisconsin is revised to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Wisconsin

The entire State.

Done in Washington, DC, this 18th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–4810 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0046]

Emerald Ash Borer; Quarantined Areas; Indiana, Michigan, and Ohio

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the emerald ash borer regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of emerald ash borer. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

DATES: This interim rule was effective May 18, 2006. We will consider all comments that we receive on or before July 24, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0046 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 APHIS–2006–0046, 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 APHIS–2006–0046.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several

horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

Quarantined Areas

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of EAB have occurred outside the quarantined areas in Indiana, Michigan, and Ohio. Specifically, new infestations of EAB have been detected in Adams, Hamilton, Huntington, Marion, and Randolph Counties, IN; Alcona, Barry, Benzie, Berrien, Charlevoix, Cheboygan, Chippewa, Huron, Ionia, Iosco, Kalamazoo, Kent, Mason, Montcalm, Montmorency, Oceana, Ogemaw, Presque Isle, Roscommon, Sanilac, St. Joseph, and Van Buren Counties, MI; and Defiance, Delaware, Erie, Fulton, Hancock, Henry, Huron, Lorain, Ottawa, Sandusky, Williams, and Wood Counties, OH. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Indiana, Michigan, and Ohio are conducting intensive survey and eradication programs in the infested areas. Indiana, Michigan, and Ohio have quarantined the infested areas and have restricted the intrastate movement of regulated articles from the quarantined areas to prevent the spread of EAB within each State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of EAB to other States.

The regulations in § 301.53–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53–3(c) to add Adams, Hamilton, Huntington, Marion, and Randolph Counties, and the remaining portions of LaGrange and Steuben Counties, IN; portions of Alcona, Barry, Benzie, Berrien, Charlevoix, Cheboygan, Chippewa, Huron, Ionia, Iosco, Kalamazoo, Kent, Mason, Montcalm, Montmorency, Oceana, Ogemaw, Presque Isle, Roscommon, Sanilac, St. Joseph, and Van Buren Counties, MI; and all or portions of Defiance, Delaware, Erie, Fulton, Hancock, Henry, Huron, Lorain, Ottawa, Sandusky, Williams, and Wood Counties, OH, to the list of quarantined areas. An exact description of the quarantined areas can be found in the rule portion of this document.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the EAB regulations by adding areas in Indiana, Michigan, and Ohio to the list of quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of this plant pest into noninfested areas of the United States.

This interim rule will affect business entities located within the newly expanded quarantined areas of Indiana, Ohio, and Michigan. In Indiana, this interim rule may affect as many as 26 nurseries, 18 firewood dealers, and approximately 20 ash lumber producers and an unknown number of woodlot owners.[1] However, we do not have information on the exact number of operations that will be subject to movement restrictions in the expanded quarantined area. Only regulated articles to be moved out of the quarantine area will be affected. We welcome information that the public may offer on the number of entities in Indiana and the proportion of their sales that will be affected by the rule.

In Ohio, at least 100 nurseries, nursery stock dealers, and landscapers are located within the newly quarantined areas.[2] Also located within quarantined areas are 60 ash lumber operations, 18 firewood dealers, 10 sawmills, 10 pallet and other wood product manufacturers, and an unknown number of woodlot owners.[3] We do not have information on the exact number of operations that will be affected by movement restrictions in Ohio's expanded quarantined area. Again, only restricted articles moved out of the quarantine area. We welcome information that the public may offer on the number of entities in Ohio and the proportion of their sales that will be affected by the rule.

Although more than 7,000 nursery operations are located within the quarantined areas of Michigan, the rule only affects the proportion of nursery stock in these operations that is deciduous shade trees of an ash species. It is also estimated that approximately 5,000 to 6,000 sawmills and firewood dealers are located within or near quarantined areas of the State. The Michigan EAB survey program is currently a statewide effort, and estimated that as many as 15,000 firms and businesses located in quarantined areas may be affected. As with the newly quarantined areas in Ohio and Indiana, we do not have information on the exact number of operations that will

[1] Robert Waltz, State Entomologist, Indiana Division of Entomology & Plant Pathology, personal communication.

[2] 2002 U.S. Census of Agriculture, County Data, Table 2.

[3] Tom Harrison, Ohio Department of Agriculture, personal communication.

be regulated by the interim rule in Michigan newly EAB-infested areas, only that there were around 317 nurseries in that area in 2002. We invite public comment regarding the number of entities in Michigan and the proportion of their sales that will be affected by the rule.

The exact number and size of newly affected entities is unknown. However, it is reasonable to assume that most are small in size according to the U.S. Small Business Administration's standards. The small business size standard based upon the North American Industry Classification System (NAICS) code 111421 (nursery and tree production) is $750,000 or less in annual receipts. The small business size standard based upon NAICS code 113210 (forest nursery and gathering of forest products) is $5 million or less in annual receipts. The small business size standard based upon NAICS codes 113310 (logging operations) and 321113 (sawmills) is 500 or fewer persons employed by the operation.[4] It is estimated that more than 90 percent of nursery operations located in these States are small operations with annual receipts of less than $750,000 (including nursery operations that sell deciduous shade trees).[5] It is reasonable to assume that nearly all sawmills and logging operations have 500 or fewer employees, since more then 80 percent of the sawmills located in these States have fewer than 20 employees and each State has an average of 14 to 15 employees per operation.[6]

The percentage of annual revenue attributable to ash species alone for affected entities is unknown. However, by way of comparison, only about 10 to 20 of the nurseries in the original quarantined area in Michigan (six counties), that is, 0.2 to 0.5 percent of all nurseries, were expected to be significantly affected by that rule. It is possible that a similarly small percentage of nurseries will be significantly affected in the areas quarantined under this rule.

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles lead us to believe that any economic effects on affected small entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. In § 301.53–3, paragraph (c) is amended as follows:

■ a. Under the heading Indiana, by revising the entries for LaGrange County and Steuben County, and by adding, in alphabetical order, entries for Adams County, Hamilton County, Huntington County, Marion County, and Randolph County to read as set forth below.

■ b. Under the heading Michigan, by:

■ i. Removing the entry for Barry and Ionia Counties.

■ ii. In the entry for Montcalm County, designating the description of the Crystal Lake area as paragraph (1) and adding a new paragraph (2) to read as set forth below.

■ iii. In the entry for Presque Isle County, designating the description of the Ocqueoc Lake area as paragraph (1) and adding a new paragraph (2) to read as set forth below.

■ iv. In the entry for St. Joseph County, designating the description of the Nottawa/Colon area as paragraph (1) and adding a new paragraph (2) to read as set forth below.

[4] Based upon 2002 Census of Agriculture—State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter 1.

[5] "Nursery Crops: 2003 Summary," National Agricultural Statistics Service, USDA July 2004.

[6] "2002 Economic Census: Manufacturing," U.S. Census Bureau, July 2005 (Indiana, Michigan, and Ohio Geographical reports).

■ v. Revising the entries for Alcona and Iosco Counties, Berrien County, Oceana County, Roscommon County, and Sanilac County to read as set forth below.

■ vi. Adding, in alphabetical order, entries for Barry, Ionia, and Kent Counties; Benzie County; Charlevoix County; Cheboygan County; Chippewa County; Huron County; Iosco County; Iosco and Ogemaw Counties; Kalamazoo County; Mason County; Montmorency County; and Van Buren County to read as set forth below.

■ c. Under the heading Ohio, by revising the entries for Defiance County, Fulton County, Hancock County, Henry County, Ottawa County, Sandusky County, and Wood County, and by adding, in alphabetical order, entries for Delaware County, Erie County, Huron County, Lorain County, and Williams County to read as set forth below.

§ 301.53–3 Quarantined areas.

* * * * *

(c) * * *

Indiana

Adams County. The entire county.

Hamilton County. The entire county.

Huntington County. The entire county.

LaGrange County. The entire county.

Marion County. The entire county.

Randolph County. The entire county.

Steuben County. The entire county.

Michigan

Alcona and Iosco Counties. Cedar Lake/Van Etten area: Greenbush Township in Alcona County in its entirety and that portion of Oscoda Township east of an imaginary line that begins at the intersection of Barlow Road and the Alcona/Iosco County line and runs due south to River Road.

* * * * *

Barry, Ionia, and Kent Counties. Freeport/Lake Odessa area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of 84th Street and Wingeier Avenue; then east on 84th Street to Keim Road; then east on Keim Road to Nash Highway; then south on Nash Highway to Campbell Road; then east on Campbell Road to Jackson Road; then south on Jackson Road to Musgrove Highway; the east on Musgrove Highway to Bliss Road; then south on Bliss Road to Martin Road; then south on Martin Road to Jordon Road; then west on Jordon Road to its end and continuing west along the shared boundary between Sections 9 and 16 in Carlton Township to Sisson Road; then west on Sisson Road to Wood School Road; then north on Wood School Road to Baker Avenue; then north on Baker Avenue to 100th Street; then east on 100th Street to Wingeier Avenue; then north on Wingeier Avenue to the point of beginning.

Benzie County. Almira, Homestead, Inland, and Platte area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of Ely Road and Hooker Road; then east on Hooker Road to Burnt Mill Road; then south on Burnt Mill Road to Bronson Lake Road; then east on Bronson Lake Road to Marl Road; then south on Marl Road to Fewins Road; then east on Fewins Road to Lamb Road; then south on Lamb Road to Cinder Road; then southwest on Cinder Road to Miller Road; then south on Miller Road to Homestead Road; then west on Homestead Road to Zimmerman Road; then north on Zimmerman Road to Benzie Highway; then east on Benzie Highway to Ely Road; then north on Ely Road to the point of beginning.

Berrien County. (1) Benton area: That portion of Benton Township west of southbound Michigan Route 139 and that part of Benton Harbor south of Main Street and west of Fair Avenue.

(2) Royalton area: That portion of Royalton Township north of Glenlord Road and Michigan Route 63, and west of Michigan Route 139.

(3) Sawyer area: Chickaming Township, City of Bridgman, that portion of Lake Township south of Shawnee Road and west of Date Road, and that portion of Weesaw Township north of Woods Road and west of Pardee Road.

(4) St. Joseph area: St. Joseph Township in its entirety and that portion of the City of St. Joseph south and west of the St. Joseph River.

(5) Watervliet Township and the City of Watervliet.

* * * * *

Charlevoix County. That portion of the county that includes Evangeline Township in its entirety; Boyne City west of Melrose Township; and Eveline Township east of an imaginary line running north/south between the western boundary lines of Bay and Wilson Townships.

Cheboygan County. (1) Cheboygan area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Woiderski Road and Inverness Trail Road; then south on Inverness Trail Road to its end and continuing south along an imaginary line to Maple Grove Lane; then east on Maple Grove Lane to Michigan Route 27; then south on Michigan Route 27 to the Inverness/Mullett Township line; then east along the Inverness/Mullett Township line to the Aloha/Benton Township line; then east along the Aloha/Benton Township line to the Benton/Grant Township line; then east along the Benton/Grant Township line to Black River Road; then northwest on Black River Road to Kreft Road; then north on Kreft Road to its end and continuing north along an imaginary line to McCormick Road; then northwest on McCormick Road to Orchard Road; then west on Orchard Road to Upper Mograin Road; then north on Upper Mograin Road to Wartella Road; then west on Wartella Road to Butler Road; then north on Butler Road to Vanyea Road; then west on Vanyea Road to Eastern Avenue; then north on Eastern Road to Lincoln Avenue; then west on Lincoln Avenue to Riggsville Road; then west on Riggville Road to Woiderski Road; then west on Woiderski Road to the point of beginning.

* * * * *

Chippewa County. Brimley area. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Michigan Route 28 and Crawford Street; then north on Crawford Street to Irish Line Road; then north on Irish Line Road to its end and continuing north along an imaginary line to the Bay Mills/Superior Township line; then north and east along the Bay Mills/Superior Township line to the Lake Superior shoreline; then east along the Lake Superior shoreline to the Bay Mills/Soo Township line; then south on the Bay Mills/Soo Township line to the intersection of the Dafter and Superior Township lines at 6 Mile Road; then south along the Dafter/Superior Township line to Forrest Road; then south on Forrest Road to Michigan Route 28; then west on Michigan Route 28 to the point of beginning.

Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.

* * * * *

Huron County. Caseville area: Lake Township in its entirety, and that portion of Caseville Township north of a line drawn as follows: Beginning on the Lake Huron shoreline at Legion Drive; then east on Legion Drive to its end and continuing east along an imaginary line to Gwinn Road; then east on Gwinn Road to the Caseville/Lake Township lines.

* * * * *

Iosco County. Tawas Point area: That portion of the county that includes the City of East Tawas in its entirety and Baldwin Township east of Wilber Road.

Iosco and Ogemaw Counties. Londo Lake area: That portion of Iosco and Ogemaw Counties bounded by a line drawn as follows: Beginning at the intersection of Michigan Route 65 and Kokosing Road; then south on Michigan Route 65 to the intersection of Galion Road and the Reno and Plainsfield Township lines; then west along the Reno and Plainfield Township lines to Peters Road; then west on Peters Road to Sage Lake Road; then north and west on Sage Lake Road to Laird Lake Road; then north along an imaginary line to Short Lake Road; then continuing north on Short Lake Road to East Rose City Road; then east on East Rose City Road to Long Lake Road; then north on Long Lake Road to Kokosing Road; then east on Kokosing Road to the point of beginning.

* * * * *

Kalamazoo County. Leonidas area: That portion of Wakeshma Township south of W Avenue.

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Mason County. Ludington area: That portion of the county west of North Lincoln Road, including Hamlin Township.

* * * * *

Montcalm County. (1) Crystal Lake area: * * *

(2) Vestaburg area: That portion of Home Township east of Deja Road and that portion of Richland Township west of Douglas Road.

Montmorency County. Long Lake area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of County Road 452 and Hubert Road; then west on Hubert Road to the point where it turns northwest; then south from this point along an imaginary line to County Road 628; then west and southwest on County Road 628 to Voyer Lake Road; then south on Voyer Lake Road to Brush Creek Truck Trail; then east on Brush Creek Truck Trail to Pine Oaks Road; then south on Pine Oaks Road to Pleasant Valley Road; the east on Pleasant Valley Road to State Street; then north on State Street to where it becomes County Road 451; then north on County Road 451 to County Road 452; then north on County Road 452 to the point of beginning.

* * * * *

Oceana County. (1) Pentwater area: Pentwater Township, including the Village of Pentwater.

(2) Silver Lake area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of 48th Avenue and Deer Road; then west on Deer Road to 40th Avenue; then north on 40th Avenue to Lake Road; then west on Lake Road to Ridge Road; then north on Ridge Road to Harrison Road; then west on Harrison Road to its end and continuing west along an imaginary line to the Lake Michigan shoreline; then southwest along the Lake Michigan shoreline to a point due west of the west end of Buchanan Road; then east from that point along an imaginary line to Buchanan Road; then east on Buchanan Road to 48th Avenue; then north on 48th Avenue to the point of beginning.

* * * * *

Presque Isle County. (1) Ocqueoc Lake area: * * *

(2) Posen area: That portion of Posen Township east of Michigan Route 65, and that portion of Krakow Township west of a north-south line defined by Basswood Road and south of the line defined by the northern boundaries of sections 4, 5, and 6 of township 33 north, range 7 east.

Roscommon County. Saint Helen area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Interstate 75 and Marl Lake Road; then south and east on Interstate 75 to the Roscommon/Ogemaw County line; then north along the Roscommon/Ogemaw County line to Marl Lake Road; then west on Marl Lake Road to its end and continuing west along an imaginary line to Marl Lake Road; then west on Marl Lake Road to the point of beginning.

* * * * *

Sanilac County. The entire county.

* * * * *

St. Joseph County. (1) Nottawa/Colon area: * * *

(2) Leonidas area: Leonidas Township.

Van Buren County. Hartford/Watervliet area: That portion of Bangor Township south of County Road 376 and west of County Road 687; that portion of Covert Township south of County Road 376 and east of Michigan Route 140; that portion of Hartford Township west of 62nd Street and the City of Hartford; and Watervliet Township and the City of Watervliet.

* * * * *

Ohio

* * * * *

Defiance County. The entire county.

Delaware County. Delaware Township, Orange Township.

Erie County. The entire county, excluding Kelleys Island.

Fulton County. The entire county.

Hancock County. Allen Township, Cass Township, Pleasant Township, Portage Township, and Washington Township.

Henry County. The entire county.

Huron County. Bronson Township, Clarksfield Township, Harland Township, Lyme Township, Norwalk Township, Peru Township, Ridgefield Township, Sherman Township, Townsend Township, and Wakeman Township.

Lorain County. Brownhelm Township, Camden Township, Henrietta Township, and the City of Vermilion.

* * * * *

Ottawa County. The entire county, excluding Ballast, Green, Middle Bass, North Bass, Rattlesnake, South Bass, Starve, and Sugar Islands.

Sandusky County. The entire county.

Williams County. The entire county.

Wood County. The entire county.

Done in Washington, DC, this 18th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–4812 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 05–059–2]

Importation of Baby Corn and Baby Carrots From Zambia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of fresh, dehusked immature (baby) sweet corn and fresh baby carrots from Zambia. As a condition of entry, both commodities will be subject to inspection at the port of first arrival and will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the quarantine pest listed on the certificate. This action will allow for the importation of Zambian baby corn and baby carrots into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133,

Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On January 11, 2006, we published in the **Federal Register** (71 FR 1700–1704, Docket No. 05–059–1) a proposal [1] to amend the fruit and vegetable regulations to allow the importation of baby corn and baby carrots from Zambia into the continental United States under certain conditions. As a condition of entry, we proposed that both commodities would be subject to inspection at the port of first arrival and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the quarantine pest listed on the certificate.

We solicited comments concerning our proposal for 60 days ending March 13, 2006. We received two comments by that date. One comment was from a private citizen who supported the proposed rule, but asked whether the national plant protection organization (NPPO) of Zambia has agreed to provide the certification that would be required in the rule. The mitigation measures for both baby carrots and baby corn were discussed with the NPPO of Zambia and agreed to in writing prior to the publication of the proposed rule.

The second comment, from an official with a State department of agriculture, expressed concern that the root knot nematode *Meloidogyne ethiopica* could enter the United States on baby carrots and suggested that an annual laboratory analysis of soil and root samples be required along with the required field inspections.

The NPPO of Zambia has agreed that shipments of baby carrots would be accompanied by a phytosanitary certificate with an additional declaration stating that the carrots in the shipment have been inspected and found free from *M. ethiopica*. Under the International Plant Protection Convention (IPPC), an additional declaration (AD) is a statement which is required by an importing country (in this case, the United States) to be entered on a phytosanitary certificate and which provides specific additional information pertinent to the phytosanitary condition of a consignment. Zambia follows the IPPC standards for phytosanitary certification. The NPPO of Zambia will, therefore, be performing the tests that are necessary to issue the phytosanitary certificate with the requisite AD. These necessary tests include the annual soil and root sampling tests suggested by the commenter.

Further, the pest risk assessment states "The risk assessment assumed that *M. ethiopica* was present with carrots in Zambia, based on evidence that the nematode was described from neighboring Zimbabwe and that the nematode can infect carrots." It is unknown whether *M. ethiopica* is present in Zambia, however, we have evaluated the risk of introducing *M. ethiopica* into the United States through the importation of baby carrots from Zambia. The requirement of the additional declaration is a preemptive, preventative measure being taken in case this nematode ever does become established in Zambia.

Meloidogyne species typically cause roots to be malformed with numerous gall or knots, which would cause infected carrots to be culled due to post-harvest processing. In addition, the harvesting and post-harvesting processing of baby carrots in Zambia is all done by hand. The post-harvest processing procedures involve five points of handling and inspection, including an initial wash, hand trimming or slicing, commodity grading, another wash, and finally hand packaging. The packinghouse personnel are trained to recognize and reject malformed carrots for export to the United States. These phytosanitary measures are taken to ensure that *M. ethiopica* does not enter into the United States through the importation of baby carrots from Zambia.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of fresh, dehusked immature (baby) sweet corn and fresh baby carrots from Zambia. As a condition of entry, both commodities will be subject to inspection at the port of first arrival and will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the quarantine pest listed on the certificate. This action will allow for the importation of Zambian baby corn and baby carrots into the United States while continuing to provide protection against the introduction of quarantine pests.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we did not receive any comments pertaining to the initial regulatory flexibility analysis presented in that document.

U.S. entities that could be affected by this rule are domestic producers of baby corn and baby carrots, and wholesalers that would import the two commodities. Restaurants or other retailers that would subsequently purchase the items could be indirectly affected. Businesses producing baby corn or baby carrots are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 111219). The Small Business Administration's (SBA) small-entity definition for these producers is annual receipts of not more than $750,000. Firms that would import the baby corn and baby carrots from Zambia

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov*, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2005–0111, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers). The wholesale sector comprises two types of wholesalers, those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

We believe that most if not all of the businesses affected by this rule will be small since, in general, firms engaged in production and importation of agricultural commodities are predominantly small.

APHIS has not been able to obtain production or trade data that is specific to baby carrots, and only limited information on baby corn. Statistical information on baby corn production is limited because producing countries either include it within the sweet corn category, as is done in the United States, or do not report production of this commodity at all. Quantities of baby corn produced, imported, and consumed in the United States are not known. According to industry sources, it is grown in California, and the largest foreign supplier is Costa Rica. Other sources are Mexico, Guatemala, and Honduras. Mexico provided 92 percent of U.S. fresh sweet corn imports during 1998–2000, with the majority arriving during the winter (December to April). Fresh baby corn is included in these imports; however its amount is unknown.

The Food and Agriculture Organization of the United Nations' statistics indicate that Zambia produced an average of 750,000 metric tons of corn per year between 1997 and 2002 and exported 1 percent of its corn production. How much of Zambia's corn production and exports is baby corn is not known. It is noted that production of baby corn and baby carrots depends on hand labor due to the unsuitability of mechanical agricultural harvesting techniques. Zambia's plentiful farm labor resources provide it with an economic advantage in the production of these crops.

The Government of Zambia has indicated its intention to export approximately 400 metric tons (16 40-foot shipping containers) of baby corn and 400 metric tons of baby carrots to the continental United States annually. There are two large commercial agricultural companies in Zambia (York Farm and Chalimbana Fresh Produce Ltd., formerly known as Agriflora Limited) that are responsible for producing the bulk of specialty crops (crops that require more intensive labor to qualify for exportation). The two companies use either contract growers or their own farms, which are distributed between Zambia's three geographical zones to ensure a year round supply of fresh produce. In 2002, Agriflora exported 100 metric tons of baby corn to the United Kingdom. According to the technical advisor of the Organic Producer and Processor Association of Zambia, of a total of 2,500 hectares of agricultural land devoted to specialty crop production that was inspected in 2004, 743 hectares have been certified for exports.

During the comment period for our proposed rule, we did not receive any information on the number of small entities that may be affected. Without additional information on the number of U.S. producers of baby corn and baby carrots, the quantities they produce, and the quantities already being imported into the United States, we cannot assess the potential impact of this rule on U.S. small entities. An increase in supply can be expected to exert downward pressure on prices and thus benefit U.S. consumers. U.S. importers of these commodities are also expected to benefit.

As discussed in the proposed rule's initial regulatory flexibility analysis, an alternative to this rule would be to require that a different set of phytosanitary measures be satisfied. However, we have concluded that the import conditions prescribed in this rule are appropriate and necessary to address the risks associated with the importation of baby corn and baby carrots from Zambia, and that import requirements less or more stringent than those in this rule would either not provide an appropriate level of phytosanitary protection or impose unduly burdensome measures.

This rule contains information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

Executive Order 12988

This final rule allows baby corn and baby carrots to be imported into the continental United States from Zambia. State and local laws and regulations regarding baby corn and baby carrots imported under this rule will be preempted while the fruit is in foreign commerce. Fresh baby corn and baby carrots are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment was prepared for, and made available for public comment through, the proposed rule for this rulemaking. No comments regarding the environmental assessment were received during the comment period for the proposed rule. The environmental assessment provides a basis for the conclusion that the importation of baby corn and baby carrots under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

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

The environmental assessment and finding of no significant impact may be viewed on the *Regulations.gov* Web site.[2] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget

[2] Go to *http://www.regulations.gov*, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2005–0111, click on "Submit," then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

(OMB) under OMB control number 0579–0284.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.41–1, a new paragraph (d) is added to read as follows:

§ 319.41–1 Plant products permitted entry.[1]

* * * * *

(d) Immature, dehusked ''baby'' sweet corn may be imported from Zambia in accordance with § 319.56–2f(a).

■ 3. A new § 319.56–2f is added to read as follows:

§ 319.56–2f Conditions governing the entry of baby corn and baby carrots from Zambia.

(a) Immature, dehusked ''baby'' sweet corn (*Zea mays* L.) measuring 10 to 25 millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the corn has been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Phomopsis jaczewskii.*

(2) After harvest, the corn must be inspected by Zambia's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a)(1) of this section before the corn may be shipped to the continental United States.

(3) The corn must be inspected at the port of first arrival as provided in § 319.56–6.

(4) Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the corn has been inspected and found free of *Phomopsis jaczewskii* based on field and packinghouse inspections.

(5) The corn may be imported in commercial shipments only.

(b) Immature ''baby'' carrots (*Daucus carota* L. ssp. *sativus*) for consumption measuring 10 to 18 millimeters (0.39 to 0.71 inches) in diameter and 50 to 105 millimeters (1.97 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the carrots have been grown must have been inspected at least once during the growing season and before harvest for the following pest: *Meloidogyne ethiopica.*

(2) After harvest, the carrots must be inspected by the NPPO of Zambia and found free of the pests listed in paragraph (b)(1) of this section before the carrots may be shipped to the continental United States.

(3) The carrots must be inspected at the port of first arrival as provided in § 319.56–6.

(4) Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the carrots have been inspected and found free of *Meloidogyne ethiopica* based on field and packinghouse inspections.

(5) The carrots must be free from leaves and soil.

(6) The carrots may be imported in commercial shipments only.

(Approved by the Office of Management and Budget under control number 0579–0284)

Done in Washington, DC, this 19th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–4813 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–34–P

[1] Except as provided in § 319.41–6 the regulations in this subpart do not authorize importations through the mails.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–022–2]

Standards for Privately Owned Quarantine Facilities for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the importation of ruminants into the United States to establish standards for privately owned quarantine facilities. The regulations have authorized the establishment of privately operated quarantine facilities for ruminants, which are subject to approval and oversight by the Animal and Plant Health Inspection Service, but have not provided specific standards for the approval, operation, and oversight of such facilities, with the exception of privately operated quarantine facilities for sheep or goats. Based on recent interest in establishing such facilities for cattle, we are adding standards for privately owned quarantine facilities covering all ruminants to ensure that any facilities that may be approved for this purpose operate in a manner that protects the health of the U.S. livestock population.

DATES: *Effective Date:* June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture operates animal quarantine facilities. We also authorize the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations at subpart D of part 93 (9 CFR 93.400 through 93.435, and referred to below as the regulations)

pertain to the importation of ruminants. Ruminants include all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes. Section 93.411 requires that ruminants imported into the United States be quarantined upon arrival for at least 30 days, with certain exceptions. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

On August 28, 2003, we published a proposed rule in the **Federal Register** (68 FR 51716–51734, Docket No. 00–022–1) to amend the regulations for the importation of ruminants into the United States to establish standards for privately owned quarantine facilities. The proposed rule described specific standards for the approval, operation, and oversight of such facilities.

We solicited comments concerning our proposal for 60 days ending October 27, 2003. We received two comments by that date, from the Australian Department of Agriculture, Fisheries and Forestry and a private cattle feeding company. These comments are discussed below.

Both comments objected to the proposed requirement that ruminants destined for a facility more than 1 mile from the port of entry be held temporarily in a facility located near the port until they are inspected. As proposed, this facility would have been a permanent structure. One commenter stated that this practice would prove costly and burdensome to importers and stressful to the animals. The commenter suggested that an inspection be conducted on board the ship. The other commenter stated that land prices and availability within 1 mile of a major port of entry would make building temporary or destination quarantine facilities there prohibitive.

We agree that building permanent structures that would serve as temporary inspection facilities within 1 mile of the port of entry may prove prohibitive for importers. Therefore, our final rule will allow the inspection facilities to be temporary structures that may be assembled and disassembled as needed. Specifically, we have changed our proposed definition of *temporary inspection facilities* in § 93.400 and have removed requirements in proposed § 93.412(d)(3)(i)(C)(4) that would be unnecessary for temporary port-side structures. These include requirements for submitting blueprints of the inspection facility, a description of the financial resources available for the facility's construction, and copies of State and local permits for construction and operation of the facilities. We will require that exporters submit a plan for APHIS approval that includes the port of entry, a description of the type of temporary facility that they wish to use at the port of entry to sort and load ruminants, and the source(s) of materials for the facilities.

One commenter disagreed with the proposed requirement that the owner of the quarantine facility pay all expenses for services provided by APHIS and place on deposit enough money to cover estimated costs for the duration of the quarantine.

We believe it is appropriate to charge those who benefit directly from APHIS' services for the costs of our providing those services. The requirement that privately owned quarantine facilities deposit, in advance, the amount needed to cover all expenses for the duration of the quarantine is a precautionary measure designed to ensure animals receive the appropriate care and do not present a disease risk in case the company is later unable to pay for these expenses.

One commenter asked which types of facility, minimum or medium security, Australian feeder cattle would be quarantined in.

The determination regarding which type of facility may be used will depend on a country of origin's animal health status at the time of exportation. Based on Australia's current animal health status, Australian feeder cattle would be quarantined in minimum security facilities.

One commenter noted that our proposal provided that ruminants to be quarantined come into the United States only at a port of which appropriate Federal personnel are available to provide the necessary services and stated that the port of entry needs to be as close as possible to the quarantine facility. The commenter appears to suggest that the location of privately owned quarantine facilities be considered in decisions regarding staffing at ports.

Few cattle are being shipped to the United States at this time that require quarantine. If this number increases, we will respond appropriately so that staff at the maritime ports at which the cattle would arrive will be able to continue providing necessary services.

In addition to the issues discussed above, the commenters raised issues that were outside the scope of this rulemaking. These issues pertain to the post-arrival quarantine of ruminants, which was not addressed in the proposed rule.

Specifically, the commenters argued that our mandatory 30-day post-arrival quarantine, which would follow a 60-day pre-export quarantine period under the current regulations in addition to transit time, was too lengthy. One of these commenters stated that Australian feeder cattle that may be imported into the United States should not be required to undergo the 30-day post-arrival quarantine.

These issues are outside the scope of this rulemaking. Our proposed rule addressed only standards for privately owned quarantine facilities for ruminants and did not propose any changes to existing quarantine requirements for imported ruminants.

Miscellaneous Changes

In addition to the changes noted previously, we are also making several nonsubstantive changes to this rule. After the proposed rule was published, the Office of International Epizooties (OIE) changed its name to the World Organization for Animal Health (OIE). We have changed all references to the Office of International Epizooties in the rule portion of this document to reflect this change. In addition, OIE has changed its disease classifications from List A and B to listed diseases. We have changed all references to "OIE List A diseases" to "OIE listed diseases."

In several locations, our proposal listed "Unit 38" in the address for the National Center for Import and Export, but the correct unit number is 39. We have replaced all occurrences of "Unit 38" with "Unit 39."

In proposed § 93.412(d)(3)(v)(B)(*2*) we stated that quarantine facilities would have to be equipped with an alarm system approved by Underwriter's Laboratories. In this final rule, we have removed the statement requiring Underwriter's Laboratories approval because we believe it is unnecessary. It is APHIS' position that very few, if any, alarm systems will be available on the market without Underwriter's Laboratories approval.

As proposed, § 93.412 (d)(4) contained some errors that we are correcting in this final rule. Specifically, paragraphs (d)(4)(iii)(B) and (d)(4)(iv)(A)(*4*) of this final rule prohibit contact with any susceptible animals outside the facility for 5 days rather than 7 days. Also, proposed § 93.412 (d)(4)(iv)(F)(*1*)(i) stated that all persons granted access to a medium security facility quarantine area would have to shower when entering and leaving the quarantine area. It is not customary to require individuals to shower when entering quarantine facilities, only when leaving them. Therefore, we have changed this provision in our final rule by removing the showering when entering requirement. In addition, proposed § 93.412 (d)(4)(iv)(F)(*2*) stated

that quarantine facility operators would be required to provide clothing and footwear to ensure that workers and others provided access to the quarantine area have clean, protective clothing and footwear after showering. Since showering will not be required prior to entering the quarantine area, § 93.412 (d)(4)(iv)(F)(*2*) of this final rule states that quarantine facility operators must ensure that workers and others provided access to the quarantine area have clean, protective clothing and footwear before entering the facility. Finally, we have corrected the address of where individuals can obtain a list of approved vaccines for ruminants in quarantine. That address is in § 93.412(d)(4)(v)(D), footnote 8.

In our proposed rule, we proposed to add a definition of *area veterinarian in charge*. Following the publication of our proposed rule, we published in the **Federal Register** (70 FR 71213–71218, Docket No. 03–080–8) an interim rule in which we added a definition for *area veterinarian in charge*. Therefore, in this final rule we are not adding the term *area veterinarian in charge* to the definitions section.

Our proposal included existing provisions which allowed APHIS to seize and sell ruminants from quarantine facilities under circumstances in which APHIS was not fully compensated for its services. We believe this requirement is no longer necessary due to the provisions of the compliance agreement in § 93.412 (d)(2). These provisions include, among other things, that prior to entering into a compliance agreement, an operator must obtain insurance or a surety bond approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility, including a worst case scenario in which all quarantined ruminants must be destroyed and disposed of because of an animal health emergency, as determined by the Administrator. We believe that these provisions will preclude any circumstances under which APHIS would have to seize and sell animals for failure to pay. Therefore, in § 93.412 (a) of this final rule, we have removed language regarding seizing and selling animals and instead, point to the provisions of our compliance agreement in paragraph (d)(2).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

The regulations for the importation of ruminants appear at 9 CFR part 93, subpart D, §§ 93.400 through 93.435. Section 93.411 requires that ruminants arriving in the United States, with certain exceptions, be quarantined upon arrival for at least 30 days. Ruminants from Canada and Mexico are generally not subject to this quarantine requirement.

Section 93.412, paragraph (a), authorizes the establishment of privately operated quarantine facilities for ruminants, subject to APHIS approval and oversight. Section 93.434 contains standards for the approval, operation, and oversight of privately operated quarantine facilities for sheep or goats. After these standards were first established in 1988, privately operated quarantine facilities were briefly used for the importation of sheep and goats into the United States. However, there are currently no approved private quarantine facilities for sheep or goats, or for other ruminants. Therefore, imported ruminants subject to quarantine must enter the United States through facilities maintained by APHIS.

We have received requests to import cattle into the United States through quarantine facilities that are privately owned and operated.

Given the current interest in establishing privately owned quarantine facilities for cattle, we are amending our regulations and publishing standards for approval and oversight of such facilities. The standards are consistent with the standards followed at APHIS quarantine facilities to ensure that the health of the U.S. livestock population is not jeopardized by the release of unhealthy animals or communicable disease agents from quarantine facilities.

These standards apply not only to privately owned facilities intended for imported cattle, but for privately owned and operated facilities that wish to handle other imported ruminants, including sheep and goats. Therefore, we are removing from our regulations the existing standards for the approval of privately operated quarantine facilities for sheep or goats.

Over the 14-year period 1991–2004, U.S. bovine imports averaged more than 2.1 million head per year, with an annual average nominal value of $1.1 billion. In comparison, the U.S. cattle inventory has averaged about 99 million head over this period. According to the 2002 Census of Agriculture, the value of U.S. cattle and calf sales in that year was approximately $45 billion, based on the sale of 74 million head. Thus, bovine imports represent about 2 percent of the U.S. cattle and calf population, and less than 3 percent, by value, of domestic sales.

Nearly all bovines imported by the United States come from Canada and Mexico. Prior to the discovery of bovine spongiform encephalopathy (BSE) in Canada in May 2003, Canada was the main foreign supplier. Currently, Mexico is the primary source of imports. In 2002, Canada exported nearly 1.7 million bovine and Mexico exported more than 800,000 bovine into the United States. Following the Canadian BSE discovery in May 2003, bovine imports from Canada were restricted for a little over 2 years, until July 2005. Imports from Mexico averaged 1.3 million head per year in 2003 and 2004.

During the 14-year period 1991–2004, bovine imports from countries other than Canada and Mexico averaged only 87 head per year. In 2002, the only other sources of bovine imports were Australia (4 head) and Guatemala (1 head). In 2003, the only bovine imports other than those supplied by Canada and Mexico were 12 head imported from New Zealand. In 2004, all of the bovines imported by the United States came from Mexico (1.37 million head) and Canada (135 head).

Based on the historic record, the number of cattle imported into the United States that would be affected by this rule would likely be small, given that ruminants from Canada and Mexico have generally not been subject to quarantine as a condition of entry into the United States. However, bovine imports from countries other than Canada and Mexico may become more substantial, depending on the number and type of facilities (medium or minimum security facility) that are approved for operation.

From 1991–2002, U.S. sheep imports averaged 51,268 head annually, showing an increase from about 23,000 head in 1991 to about 139,000 head in 2002. Canada dominated this market as well, prior to the 2003 BSE discovery, supplying more than 99 percent of U.S. sheep imports. Numbers of sheep imported from all other countries have been very small (12 head from Australia in 2003, 20 head from Mexico in 2004). The annual average nominal value of sheep imports in the 1991–2002 period was approximately $54 million. After BSE was discovered in Canada in May 2003, we began prohibiting imports of

live ruminants from Canada. Therefore, in 2003, the value of sheep imports fell to $7.1 million and in 2004, it totaled only $16,000 due to BSE import restrictions on Canada.

U.S. imports of goats in 1994 (28,912 head) greatly exceeded the number imported in all other years of the period from 1991–2002. When this year is excluded, annual import levels over the period averaged 2,244 head, with more than 80 percent supplied by Canada. The annual average nominal value of goat imports from 1991–2002 (excluding 1994 imports) was about $400,000 ($178 per head). There were 11,874 goats imported by the United States in 2002, of which 9,948 head (84 percent) were supplied by Canada. In 2003, 5,967 and 1,486 goats were imported from Canada and Australia, respectively, valued at about $600,000. In 2004, only 147 goats valued at $14,000 were imported, all from Australia.

APHIS and other Federal agencies are required to evaluate whether proposed regulations are likely to have a significant economic impact on a substantial number of small entities. Privately owned and operated quarantine facilities have been used from time to time for the importation of sheep and goats into the United States. However, no such approved facilities are currently in operation. Therefore, the standards contained in this rule will not adversely affect any such entities, large or small. However, should one or more privately owned quarantine facility be approved for operation, importers should benefit by having additional options for the placement of ruminants to be imported into the United States. And, particularly in the case of minimum security facilities, importers may have the opportunity to import ruminants from certain regions in larger lot sizes as compared to the current situation of having the animals placed in an APHIS indoor quarantine facility.

APHIS does not expect this rule to have a major effect on the number of cattle, sheep, and goats imported by the United States, given the historically small import percentages supplied by countries other than Canada (prior to May 2003) and Mexico. Moreover, the total import levels, themselves, are small in comparison to U.S. production levels.

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment has not been prepared for this final rule. Because the environmental impacts that will result from this action would vary according to the location and design of the facility being approved, APHIS has determined site-specific environmental assessments must be conducted for each privately owned quarantine facility for ruminants prior to approval of the facility. APHIS will publish a notice in the **Federal Register** for each environmental assessment we conduct in this regard and we will invite public comment on each site-specific environmental assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0232.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2–3. Section 93.400 is amended by revising the footnotes to the definitions of *immediate slaughter* and *recognized slaughtering establishment* and by adding, in alphabetical order, new definitions for *Federal veterinarian, lot, lot-holding area, nonquarantine area, operator, privately owned medium security quarantine facility (medium security facility), privately owned minimum security quarantine facility (minimum security facility), quarantine area, State veterinarian, temporary inspection facility, World Organization for Animal Health (OIE)* to read as follows:

§ 93.400 Definitions.

* * * * *

Federal veterinarian. A veterinarian employed and authorized by the Federal Government to perform the tasks required by this subpart.

* * * * *

Immediate slaughter. Consignment directly from the port of entry to a recognized slaughtering establishment [1] and slaughtered within 2 weeks from the date of entry.

* * * * *

Lot. A group of ruminants that, while held on a conveyance or premises, has opportunity for physical contact with each other or with each other's excrement or discharges at any time between arrival at the quarantine facility and 60 days prior to export to the United States.

Lot-holding area. That area in a privately owned medium or minimum security quarantine facility in which a single lot of ruminants is held at one time.

* * * * *

Nonquarantine area. That area of a privately owned medium or minimum security quarantine facility that includes

[1] The name of recognized slaughtering establishments approved under this part may be obtained from the area veterinarian in charge for the State of destination of the shipment. The name and address of the area veterinarian in charge in any State is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

offices, storage areas, and other areas outside the quarantine area, and that is off limits to ruminants, samples taken from ruminants, and any other objects or substances that have been in the quarantine area during the quarantine of ruminants.

* * * * *

Operator. A person other than the Federal Government who owns or operates, subject to APHIS' approval and oversight, a privately owned medium or minimum security quarantine facility.

* * * * *

Privately owned medium security quarantine facility (medium security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for medium security facilities in § 93.412(d); and

(4) Provides the necessary level of quarantine services for the holding of ruminants in an indoor, vector-proof environment prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE listed diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Privately owned minimum security quarantine facility (minimum security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for minimum security facilities in § 93.412(d);

(4) Is used for the quarantine of ruminants that pose no significant risk, as determined by the Administrator, of introducing or transmitting to the U.S. livestock population any livestock disease that is biologically transmissible by vectors; and

(5) Provides the necessary level of quarantine services for the outdoor holding of ruminants, prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE listed diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Quarantine area. That area of a privately owned medium or minimum security quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that ruminants have access to, including loading docks for receiving and releasing ruminants, and any areas used to conduct examinations of ruminants and take samples and any areas where samples are processed or examined.

Recognized slaughtering establishment.[2] * * *

* * * * *

State veterinarian. A veterinarian employed and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

* * * * *

Temporary inspection facility. A temporary facility that is constructed of metal panels that can be erected and broken down alongside the transportation vessel carrying ruminants that are imported into the United States in accordance with § 93.408 of this subpart and that will be quarantined at a minimum or medium security quarantine facilities located more than 1 mile from the port of entry.

* * * * *

World Organization for Animal Health (OIE). The international organization recognized by the World Trade Organization for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures related to animal health.

* * * * *

■ 4. In § 93.403, paragraph (g) is revised to read as follows:

§ 93.403 Ports designated for the importation of ruminants.

* * * * *

(g) *Ports and privately owned quarantine facilities.* Ruminants may be imported into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the Bureau of Customs and Border Protection, and quarantined at an APHIS-approved privately owned quarantine facility, provided the applicable provisions of §§ 93.401, 93.404(a), 93.407, 93.408, and 93.412 are met.

§ 93.404 [Amended]

■ 5. In § 93.404, paragraph (a)(1) is amended by adding the words "the name and address of the quarantine facility, if the ruminants are to be quarantined at a privately owned quarantine facility;" after the words "and the port of entry in the United States;".

■ 6. In § 93.412, paragraphs (a) and (c) are revised and a new paragraph (d) and OMB citation at the end of the section are added to read as follows:

§ 93.412 Ruminant quarantine facilities.

(a) *Privately owned quarantine facilities.* The operator of a privately owned medium or minimum security quarantine facility subject to the regulations in this subpart shall arrange for acceptable transportation from the port to the privately owned quarantine facility and for the care, feeding, and handling of the ruminants from the time of unloading at the port to the time of release from the quarantine facility. Such arrangements shall be agreed to in advance by the Administrator. All expenses related to these activities shall be the responsibility of the operator. The privately owned quarantine facility must be suitable for the quarantine of the ruminants and must be approved by the Administrator prior to the issuance of any import permit. The facilities occupied by the ruminants should be kept clean and sanitary to the satisfaction of the APHIS representatives. If for any cause, the care, feeding, or handling of ruminants, or the sanitation of the facilities is neglected, in the opinion of the overseeing APHIS representative, such services may be furnished by APHIS in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section. The operator must request in writing inspection and other services as may be required, and shall waive all claims against the United States and APHIS or any employee of APHIS for damages which may arise from such services. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When APHIS finds it necessary to extend the usual minimum quarantine period, APHIS shall advise the operator in writing, and the operator must pay for such additional quarantine and other services required. The operator must pay for all services received in connection with each separate lot of ruminants as specified in the compliance agreement required under paragraph (d)(2) of this section.

* * * * *

(c) APHIS collection of payments from the importer, or his or her agent, or the operator, for service rendered shall be deposited so as to be available

[2] See footnote 1.

for defraying the expenses involved in this service.

(d) *Standards for privately owned quarantine facilities for ruminants.*

(1) *APHIS approval of facilities.*

(i) *Approval procedures.* Persons seeking APHIS approval of a privately owned medium or minimum security quarantine facility for ruminants must make written application to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231. The application must include the full name and mailing address of the applicant; the location and street address of the facility for which approval is sought; blueprints of the facility; a description of the financial resources available for construction, operation and maintenance of the facility; copies of all approved State permits for construction and operation of the facility (but not local building permits), as well as copies of all approved Federal, State, and local environmental permits; the anticipated source(s) or origin(s) of ruminants to be quarantined, as well as the expected size and frequency of shipments, and a contingency plan for the possible destruction and disposal of all ruminants capable of being held in the facility.

(A) If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval must agree to pay the costs of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for evaluation services at hourly rates are listed in § 130.30 of this chapter. If the facility is approved by APHIS, the operator must enter into a compliance agreement in accordance with paragraph (d)(2) of this section.

(B) Requests for approval must be submitted at least 120 days prior to the date of application for local building permits. Requests for approval will be evaluated on a first-come, first-served basis.

(ii) *Criteria for approval.* Before a facility may be built to operate as a privately owned medium or minimum security quarantine facility for ruminants, it must be approved by APHIS. To be approved:

(A) APHIS must find, based on an environmental assessment, and based on any required Federal, State, and local environmental permits or evaluations secured by the operator and copies of which are provided to APHIS, that the operation of the facility will not have significant environmental effects;

(B) The facility must meet all the requirements of paragraph (d) of this section;

(C) The facility must meet any additional requirements that may be imposed by the Administrator in each specific case, as specified in the compliance agreement required under paragraph (d)(2) of this section, to ensure that the quarantine of ruminants in the facility will be adequate to enable determination of their health status, as well as to prevent the transmission of livestock diseases into, within, and from the facility; and

(D) The Administrator must determine whether sufficient personnel, including one or more APHIS veterinarians and other professional, technical, and support personnel, are available to serve as APHIS representatives at the facility and provide continuous oversight and other technical services to ensure the biological security of the facility, if approved. APHIS will assign personnel to facilities requesting approval in the order that the facilities meet all of the criteria for approval. The Administrator has sole discretion on the number of APHIS personnel to be assigned to the facility.

(iii) *Maintaining approval.* To maintain APHIS approval, the operator must continue to comply with all the requirements of paragraph (d) of this section as well as the terms of the compliance agreement executed in accordance with paragraph (d)(2) of this section.

(iv) *Withdrawal or denial of approval.* Approval of a proposed privately owned medium or minimum security quarantine facility may be denied or approval of a facility already in operation may be withdrawn at any time by the Administrator for any of the reasons provided in paragraph (d)(1)(iv)(C) of this section.

(A) Before facility approval is denied or withdrawn, APHIS will inform the operator of the proposed or existing facility and include the reasons for the proposed action. If there is a conflict as to any material fact, APHIS will afford the operator, upon request, the opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice that APHIS adopts for the proceeding.

(B) Withdrawal of approval of an existing facility will become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, APHIS will give written confirmation to the operator of the facility as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal of approval for the reasons provided in paragraph (d)(1)(iv)(C) of this section, the Administrator will also automatically withdraw approval when the operator of any approved facility notifies the area veterinarian in charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[7]

(C) The Administrator may deny or withdraw the approval of a privately owned medium or minimum security quarantine facility if:

(*1*) Any requirement of paragraph (d) of this section or the compliance agreement is not met; or

(*2*) The facility has not been in use to quarantine ruminants for a period of at least 1 year; or

(*3*) The operator fails to remit any charges for APHIS services rendered; or

(*4*) The operator or a person responsibly connected with the business of the facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal; or

(*5*) The operator or a person responsibly connected with the business of the facility is or has been convicted of a crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(*6*) Any other requirement under the Animal Health Protection Act (7 U.S.C. 8301–8317) or the regulations thereunder are not met.

(D) For the purposes of paragraph (d)(1)(iv) of this section, a person is deemed to be responsibly connected with the business of the facility if such person has an ownership, mortgage, or lease interest in the facility, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

(2) *Compliance agreement.* (i) A privately owned medium or minimum security quarantine facility must operate in accordance with a compliance

[7] The name and address of the area veterinarian in charge in any State is available from the Animal and Plant Health Inspection Servcie, Veterinary Services, National Center for Import and Export, 4700 River road Unit 39, Riverdale, MD 20737–1231.

agreement executed by the operator or other designated representative of the facility and by the Administrator. The compliance agreement must be signed by both parties before a facility may commence operations. The compliance agreement must provide that:

(A) The facility must meet all applicable requirements of paragraph (d) of this section;

(B) The facility's quarantine operations are subject to the strict oversight of APHIS representatives;

(C) The operator agrees to be responsible for the cost of building the facility; all costs associated with its maintenance and operation; all costs associated with the hiring of personnel to attend to the ruminants, as well as to maintain and operate the facility; all costs associated with the care of quarantined ruminants, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; all costs associated with the death or destruction and disposition of quarantined ruminants; and all APHIS charges for the services of APHIS representatives in accordance with this section and part 130 of this chapter;

(D) The operator obtained, prior to execution of this agreement, a financial instrument (insurance or surety bond) approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility, including a worst case scenario in which all quarantined ruminants must be destroyed and disposed of because of an animal health emergency, as determined by the Administrator.

(E) The operator will deposit with the Administrator, prior to commencing quarantine operations, a certified check or U.S. money order to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine. If actual costs incurred by APHIS over the quarantine period exceed the deposited amount, the operator will pay for any additional costs incurred by APHIS, based on official accounting records. Payment for all services received in connection with each lot of ruminants in quarantine shall be made prior to release of the ruminants. The operator must pay for any other costs incurred by APHIS with respect to the quarantine following the release of the ruminants, based on official records, within 14 days of receipt of the bill showing the balance due. APHIS will return to the operator any unobligated funds deposited with APHIS, after the release of the lot of ruminants from the facility and termination or expiration of the compliance agreement, or, if requested, credit to the operator's account such funds to be applied towards payment of APHIS services at a future date.

(ii) Prior to the entry of each subsequent lot of ruminants into the medium or minimum security facility, a new compliance agreement must be executed, and a certified check or U.S. money order to the Administrator must be deposited to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine.

(3) *Physical plant requirements.* A privately owned medium or minimum security quarantine facility must meet the following requirements as determined by an APHIS inspection before ruminants may be admitted to it.

(i) *Location.*

(A) The medium or minimum security facility must be located at a site approved by the Administrator, and the specific routes for the movement of ruminants from the port must be approved in advance by the Administrator, based on consideration of whether the site or routes would put the animals in a position that could result in their transmitting communicable livestock diseases.

(B) In the case of a medium security facility, the facility must be located at least one-half mile from any premises holding livestock. In the case of a minimum security facility, the Administrator will establish the required minimum distance between the facility and other premises holding livestock on a case-by-case basis.

(C) If the medium or minimum security facility is to be located more than 1 mile from a designated port, the operator must make arrangements for the imported ruminants to be held in a temporary inspection facility to allow for the inspection of the imported ruminants by a Federal or State veterinarian prior to the animals' movement to the medium or minimum security facility.

(*1*) The temporary inspection facility must have adequate space for Federal or State veterinarians to conduct examinations and testing of the imported ruminants.

(*2*) The examination space of the temporary inspection facility must be equipped with appropriate animal restraining devices for the safe inspection of ruminants.

(*3*) The temporary inspection facility may not hold more than one lot of animals at the same time.

(*4*) In seeking APHIS approval of the temporary inspection facility, the operator must provide APHIS with the following information: The port of entry; a description of the temporary inspection facility; and the anticipated source(s) of the materials to be used for the facility.

(*5*) If the ruminants, upon inspection at the temporary inspection facility, are determined to be infected with or exposed to a disease that precludes their entry into the United States, the animals will be refused entry. Ruminants refused entry remain the responsibility of the operator, but subject to further handling or disposition as directed by the Administrator in accordance with § 93.408 of this subpart.

(*6*) APHIS' approval to build and operate a medium or minimum security facility outside the immediate vicinity of a designated port is contingent upon APHIS' approval of the temporary inspection facility at the port, as well as approval of the routes for the movement of ruminants from the port to the medium or minimum security facility.

(ii) *Construction.* The medium or minimum security facility must be of sound construction, in good repair, and properly designed to prevent the escape of quarantined ruminants. It must have adequate capacity to receive and hold a shipment of ruminants as a lot on an "all-in, all-out" basis and must include the following:

(A) *Loading docks.* The facility must include separate docks for animal receiving and releasing and for general receiving and pickup, or, alternatively, a single dock may be used for both purposes if the dock is cleaned and disinfected after each use in accordance with paragraph (d)(4)(iv)(D) of this section.

(B) *Perimeter fencing.* The facility must be surrounded by double-security perimeter fencing separated by at least 30 feet and of sufficient height and design to prevent the entry of unauthorized persons and animals from outside the facility and to prevent the escape of any ruminants in quarantine.

(C) *Means of isolation.* The facility must provide pens, chutes, and other animal restraining devices, as appropriate, for inspection and identification of each animal, as well as for segregation, treatment, or both, of any ruminant exhibiting signs of illness. The medium or minimum security facility must also have lot-holding areas of sufficient size to prevent overcrowding. A medium security facility may hold more than one lot of ruminants as long as the lots are separated by physical barriers such that ruminants in one lot do not have

physical contact with ruminants in another lot or with their excrement or discharges. A minimum security facility may not hold more than one lot of animals at the same time.

(D) *APHIS space.* The facility must have adequate space for APHIS representatives to conduct examinations and draw samples for testing of ruminants in quarantine, prepare and package samples for mailing, and store duplicate samples and the necessary equipment and supplies for each lot of ruminants. The examination space must be equipped with appropriate animal restraining devices for the safe inspection of ruminants. The facility must also provide a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

(E) *Storage.* The facility must have sufficient storage space for equipment and supplies used in quarantine operations. Storage space must include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate storage area for feed and bedding, if feed and bedding are stored at the facility.

(F) *Other work areas.* The facility must include work areas for the repair of equipment and for cleaning and disinfecting equipment used in the facility.

(iii) *Additional construction requirements for medium security facilities.* For medium security facilities only, the following requirements must also be met:

(A) *Self-contained building.* The medium security facility must be constructed so that the quarantine area is located in a secure, self-contained building that contains appropriate control measures against the spread of livestock diseases biologically transmissible by vectors. All entryways into the nonquarantine area of the building must be equipped with a secure and lockable door. While ruminants are in quarantine, all access to the quarantine area must be from within the building. Each entryway to the quarantine area must be equipped with a solid self-closing door. Separate access must be provided within the quarantine area to each lot-holding area so that it is not necessary to move through one lot-holding area to gain access to another lot-holding area. Entryways to each lot-holding area within the quarantine area would also have to be equipped with a solid lockable door. Emergency exits to the outside may exist in the quarantine area if required by local fire ordinances. Such emergency exits must be constructed so as to permit their opening from the inside of the facility only.

(B) *Windows and other openings.* Any windows or other openings in the quarantine area must be double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of livestock diseases and to provide ventilation sufficient to ensure the comfort and safety of all ruminants in the facility. The interior and exterior screens must be separated by at least 3 inches (7.62 cm). All screening of windows or other openings must be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

(C) *Surfaces.* The medium security facility must be constructed so that the floor surfaces with which ruminants have contact are nonslip and wear-resistant. All floor surfaces with which the ruminants, their excrement, or discharges have contact must slope gradually to the center, where one or more drains of at least 8 inches in diameter are located for adequate drainage, or, alternatively, must be of slatted or other floor design that allows for adequate drainage. All floor and wall surfaces with which the ruminants, their excrement, or discharges have contact must be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall surfaces with which the ruminants, their excrement, or discharges do not have contact must be able to withstand cleaning and disinfection between shipments of ruminants. All floor and wall surfaces must be free of sharp edges that could cause injury to ruminants.

(D) *Ventilation and climate control.* The medium security facility must be constructed with a heating, ventilation, and air conditioning (HVAC) system capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels that are not injurious or harmful to the health of ruminants in quarantine. Air supplied to lot-holding areas must not be recirculated or reused for other ventilation needs. HVAC systems for lot-holding areas must be separate from air handling systems for other operational and administrative areas of the facility. In addition, if the facility is approved to handle more than one lot of ruminants at a time, each lot-holding area must have its own separate HVAC system that is designed to prevent cross-contamination between the separate lot-holding areas.

(E) *Lighting.* The medium security facility must have adequate lighting throughout, including in the lot-holding areas and other areas used to examine ruminants and conduct necropsies.

(F) *Fire protection.* The medium security facility, including the lot-holding areas, must have a fire alarm and voice communication system.

(G) *Monitoring system.* The medium security facility must have a television monitoring system or other arrangement sufficient to provide a full view of the lot-holding areas.

(H) *Communication system.* The medium security facility must have a communication system between the nonquarantine and quarantine areas of the facility.

(I) *Necropsy area.* The medium security facility must have an area that is of sufficient size to perform necropsies on ruminants and that is equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment.

(J) *Additional storage requirements.* Feed storage areas in the medium security facility must be vermin-proof. Also, if the medium security facility has multiple lot-holding areas, then separate storage space for supplies and equipment must be provided for each lot-holding area.

(K) *Showers.* In a medium security facility, there must be a shower at the entrance to the quarantine area. A shower also must be located at the entrance to the necropsy area. A clothes-storage and clothes-changing area must be provided at each end of each shower area. There also must be one or more receptacles near each shower so that clothing that has been worn in a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

(L) *Restrooms.* The medium security facility must have permanent restrooms in both the nonquarantine and quarantine areas of the facility.

(M) *Break room.* The medium security facility must have an area within the quarantine area for breaks and meals.

(N) *Laundry area.* The medium security facility must have an area for washing and drying clothes, linens, and towels.

(iv) *Sanitation.* To ensure that proper animal health and biological security measures are observed, a privately owned medium or minimum security

quarantine facility must provide the following:

(A) Equipment and supplies necessary to maintain the facility in a clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment.

(B) Separately maintained sanitation and pest control equipment and supplies for each lot-holding area if the facility will hold more than one lot of ruminants at a time (applicable to medium security facilities only).

(C) A supply of potable water adequate to meet all watering and cleaning needs, with water faucets for hoses located throughout the facility. An emergency supply of water for ruminants in quarantine also must be maintained.

(D) A stock of disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator that is sufficient to disinfect the entire facility.

(E) The capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Other waste material must be handled in such a manner that minimizes spoilage and the attraction of pests and must be disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes must be carried out under the direct oversight of APHIS representatives.

(F) The capability to dispose of ruminant carcasses in a manner approved by the Administrator and under conditions that prevent the spread of disease from the carcasses.

(G) For incineration to be carried out at the facility, incineration equipment that is detached from other facility structures and is capable of burning wastes or carcasses as required. The incineration site must include an area sufficient for solid waste holding. Incineration may also take place at a local site away from the facility premises. All incineration activities must be carried out under the direct oversight of an APHIS representative.

(H) The capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, and from the facility. If the facility is approved to handle more than one lot of ruminants at the same time, there must be separate drainage systems for each lot-holding area in order to prevent cross contamination.

(v) *Security.*

(A) A privately owned medium or minimum security quarantine facility must provide the following security measures:

(*1*) The facility and premises must be kept locked and secure at all times while the ruminants are in quarantine.

(*2*) The facility and premises must have signs indicating that the facility is a quarantine area and no visitors are allowed.

(*3*) The operator must furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times.

(*4*) APHIS is authorized to place seals on any or all entrances and exits of the facility, when determined necessary by APHIS to ensure security, and to take all necessary steps to ensure that the seals are broken only in the presence of an APHIS representative. If the seals are broken by someone other than an APHIS representative, it will be considered a breach in security, and an immediate accounting of all ruminants in the facility will be made by an APHIS representative. If a breach in security occurs, APHIS may extend the quarantine period as long as necessary to determine that the ruminants are free of communicable livestock diseases.

(*5*) In the event that a communicable livestock disease is diagnosed in quarantined ruminants, the Administrator may require that the operator have the facility guarded by a bonded security company, at the expense of the operator of the facility, in a manner that the Administrator deems necessary to ensure the biological security of the facility.

(B) A privately owned medium security facility also must provide the following security measures:

(*1*) The medium security facility and premises must be guarded at all times by one or more representatives of a bonded security company, or, alternatively, the medium security facility must have an electronic security system that prevents the entry of unauthorized persons into the facility and prevents animals outside the facility from having contact with ruminants in quarantine;

(*2*) If an electronic security system is used, the electronic security system must be coordinated through or with the local police so that monitoring of the facility is maintained whenever APHIS representatives are not at the facility. The electronic security system must be of the "silent type" and must be triggered to ring at the monitoring site and, if the operator chooses, at the facility. The operator must provide written instructions to the monitoring agency stating that the police and an APHIS representative designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator also must submit a copy of those instructions to the Administrator. The operator must notify the designated APHIS representative whenever a break in security occurs or is suspected of occurring.

(*4*) *Operating procedures.* The following procedures must be followed at a privately owned medium or minimum security quarantine facility at all times:

(i) *APHIS oversight.*

(A) The quarantine of ruminants at the facility will be subject to the strict oversight of APHIS representatives authorized to perform the services required by this subpart.

(B) If, for any reason, the operator fails to properly care for, feed, or handle the quarantined ruminants as required in paragraph (d) of this section, or in accordance with animal health and husbandry standards provided elsewhere in this chapter, or fails to maintain and operate the facility as provided in paragraph (d) of this section, APHIS representatives are authorized to furnish such neglected services at the operator's expense, as authorized in paragraph (a) of this section.

(ii) *Personnel.*

(A) The operator must provide adequate personnel to maintain the facility and care for the ruminants in quarantine, including attendants to care for and feed ruminants, and other personnel as needed to maintain, operate, and administer the facility.

(B) The operator must provide APHIS with an updated list of all personnel who have access to the facility. The list must include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility.

(C) The operator must provide APHIS with signed statements from all personnel having access to the facility in which the person agrees to comply with paragraph (d) of this section and applicable provisions of this part, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

(iii) *Authorized access.*

(A) Access to the facility premises as well as inside the quarantine area will be granted only to APHIS representatives and other persons specifically authorized to work at the

facility. All other persons are prohibited from the premises unless specifically granted access by an APHIS representative. Any visitors granted access must be accompanied at all times by an APHIS representative while on the premises.

(B) All visitors, except veterinary practitioners who enter the facility to provide emergency care, must sign an affidavit before entering the quarantine area, if determined necessary by the overseeing APHIS representative, declaring that they will not have contact with any susceptible animals outside the facility for at least 5 days after contact with the ruminants in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable livestock diseases of ruminants.

(iv) *Sanitary practices.*

(A) All persons granted access to the quarantine area must:

(*1*) Wear clean protective work clothing and footwear upon entering the quarantine area.

(*2*) Wear disposable gloves when handling sick animals and then wash hands after removing gloves.

(*3*) Change protective clothing, footwear, and gloves when they become soiled or contaminated.

(*4*) Be prohibited, if determined necessary by the overseeing APHIS representative, from having contact with any susceptible animals outside the facility for at least 5 days after the last contact with ruminants in quarantine, or for a longer period of time determined necessary by the overseeing APHIS representative to prevent the transmission of livestock diseases.

(B) All equipment (including tractors) must be cleaned and disinfected prior to being used in the quarantine area of the facility with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator. The equipment must remain dedicated to the facility for the entire quarantine period. Any equipment used with quarantined ruminants must remain dedicated to that particular lot of ruminants for the duration of the quarantine period or be cleaned and disinfected before coming in contact with ruminants from another lot. Prior to its use on another lot of ruminants or its removal from the quarantine area, such equipment must be cleaned and disinfected to the satisfaction of an APHIS representative.

(C) Any vehicle, before entering or leaving the quarantine area of the facility, must be immediately cleaned and disinfected under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(D) If the facility has a single loading dock, the loading dock must be immediately cleaned and disinfected after each use under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(E) That area of the facility in which a lot of ruminants had been held or had access must be thoroughly cleaned and disinfected under the oversight of an APHIS representative upon release of the ruminants, with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator, before a new lot of ruminants is placed in that area of the facility.

(F) For medium security facilities only, the following additional sanitary practices also must be followed:

(*1*) All persons granted access to the quarantine area, must:

(*i*) Shower when leaving the quarantine area.

(*ii*) Shower before entering a lot-holding area if previously exposed from access to another lot-holding area.

(*iii*) Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed.

(*iv*) Be prohibited, unless specifically allowed otherwise by the overseeing APHIS representative, from having contact with any ruminants in the facility, other than the lot or lots of ruminants to which the person is assigned or is granted access.

(*2*) The operator is responsible for providing a sufficient supply of clothing and footwear to ensure that workers and others provided access to the quarantine area of the facility have clean, protective clothing and footwear before entering the facility.

(*3*) The operator is responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn in the quarantine area in a manner approved by an APHIS representative as adequate to preclude the transmission of disease within and from the facility. At the end of each workday, work clothing worn into each lot-holding area and elsewhere in the quarantine area must be collected and kept in bags until the clothing is washed. Used footwear must either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

(v) *Handling of ruminants in quarantine.*

(A) Each lot of ruminants to be quarantined must be placed in the facility on an "all-in, all-out" basis. No ruminant may be taken out of a lot while the lot is in quarantine, except for diagnostic purposes, and no ruminant may be added to a lot while in quarantine.

(B) The facility must provide sufficient feed and bedding for the ruminants in quarantine, and it must be free of vermin and not spoiled. Feed and bedding must originate from a region that has been approved by APHIS as a source for feed and bedding.

(C) Breeding of ruminants or collection of germ plasm from ruminants is prohibited during the quarantine period unless necessary for a required import testing procedure.

(D) Ruminants in quarantine will be subjected to such tests and procedures as directed by an APHIS representative to determine whether the ruminants are free of communicable livestock diseases. While in quarantine, ruminants may be vaccinated only with vaccines that have been approved by the APHIS representative and licensed in accordance with § 102.5 of this chapter.[8] Vaccines must be administered either by an APHIS veterinarian or an accredited veterinarian under the direct oversight of an APHIS representative.

(E) Any death or suspected illness of ruminants in quarantine must be reported immediately to the overseeing APHIS representative. The affected ruminants must be disposed of as the Administrator may direct or, depending on the nature of the disease, must be cared for as directed by APHIS to prevent the spread of disease.

(F) Quarantined ruminants requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. A second quarantine site must be established to house the ruminants at the facility of destination (*e.g.*, veterinary college hospital). In such cases, APHIS may extend the quarantine period until the results of any outstanding tests or postmortems are received.

(G) Should the Administrator determine that an animal health emergency exists at the facility, arrangements for the final disposition of the infected or exposed lot of ruminants must be accomplished within 4

[8] A list of approved vaccines is available from the Center for Veterinary Biologics, USDA, APHIS, VS, 510 south 17th Street6, Suite 104, Ames, IA 50010.

workdays following disease confirmation. Subsequent disposition of the ruminants must occur under the direct oversight of APHIS representatives.

(vi) *Recordkeeping.*

(A) The operator must maintain a current daily log, to record the entry and exit of all persons entering and leaving the facility.

(B) The operator must retain the daily log, along with any logs kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the ruminants from quarantine and must make such logs available to APHIS representatives upon request.

(5) *Environmental quality.* If APHIS determines that a privately owned medium or minimum security quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

(6) *Other laws.* A privately owned medium or minimum security quarantine facility must comply with other applicable Federal laws and regulations, as well as with all applicable State and local codes and regulations.

(7) *Variances.* The Administrator may grant variances to existing requirements relating to location, construction, and other design features of a privately owned medium security quarantine facility or minimum security quarantine facility as well as to sanitation, security, operating procedures, recordkeeping, and other provisions in paragraph (d) of this section, but only if the Administrator determines that the variance causes no detrimental impact to the health of the ruminants or to the overall biological security of the quarantine operations. The operator must submit a request for a variance to the Administrator in writing at least 30 days in advance of the arrival of the ruminants to the facility. Any variance also must be expressly provided for in the compliance agreement.

(Approved by the Office of Management and Budget under control number 0579–0232)

■ 7. Section 93.413 is revised to read as follows:

§ 93.413 Quarantine stations, visiting restricted; sales prohibited.

Visitors are not permitted in the quarantine enclosures during any time that ruminants are in quarantine unless the APHIS representative or inspector in charge specifically grants access under such conditions and restrictions as may be imposed by the APHIS representative or inspector in charge. An importer (or his or her accredited agent or veterinarian) may be admitted to the yards and buildings containing his or her quarantined ruminants at such intervals as may be deemed necessary, and under such conditions and restrictions as may be imposed, by the APHIS representative or the inspector in charge of the quarantine facility or station. On the last day of the quarantine period, owners, officers, or registry societies, and others having official business or whose services may be necessary in the removal of the ruminants may be admitted upon written permission from the APHIS representative or inspector in charge. No exhibition or sale shall be allowed within the quarantine grounds.

§ 93.414 [Amended]

■ 8. In § 93.414, the first sentence is amended by adding the words "APHIS representative or" immediately before the words "inspector in charge".

■ 9. In the undesignated center heading "Mexico" before § 93.424, redesignate footnote 9 as footnote 10.

■ 10. In the undesignated center heading "Central America and West Indies" before § 93.422, redesignate footnote 8 as footnote 9.

■ 11. In the undesignated center heading "Canada" before § 93.417, redesignate footnote 7 as footnote 8.

§ 93.434 [Removed and Reserved]

■ 12. Section 93.434 is removed and reserved.

Done in Washington, DC, this 19th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–4811 Filed 5–23–06; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 41, 158, 286 and 349

[Docket No. RM06–2–001; Order No. 675–A]

Procedures for Disposition of Contested Audit Matters

Issued May 18, 2006.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final rule, order on rehearing and clarification.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to expand due process for certain audited persons who dispute findings or proposed remedies contained in draft audit reports.

DATES: *Effective Date:* This Final Rule will become effective June 23, 2006.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

Order No. 675–A

Order on Rehearing and Clarification

I. Introduction

1. On February 17, 2006, the Commission issued a Final Rule, Order No. 675,[1] that expands the procedural rights of persons subject to all audits conducted by the Commission staff under the Federal Power Act (FPA),[2] the Natural Gas Act (NGA),[3] the Natural Gas Policy Act (NGPA),[4] and the Interstate Commerce Act (ICA),[5] except for audits pertaining to reliability that the Commission authorized in Order No. 672.[6] Prior to the effective date of Order No. 675, audited persons who disagreed with non-financial audit matters approved by the Commission were required to seek rehearing of that order to obtain further Commission review.

2. Pursuant to Order No. 675, audited persons may seek Commission review of disputed matters contained in an audit report or similar document in a procedure that provides additional due process to audited persons subject to non-financial audits. Under this procedure, audited persons may provide in writing to the audit staff a response to a draft notice of deficiency, draft audit report or similar document

[1] *Procedures for Disposition of Contested Audit Matters,* Order No. 675, 71 FR 9698 (Feb. 27, 2006), III FERC Stats. & Regs. ¶ 31,209 (Feb. 17, 2006).

[2] 16 U.S.C. 791a, *et seq.* (2000).

[3] 15 U.S.C. 717, *et seq.* (2000).

[4] 15 U.S.C. 3301, *et seq.* (2000).

[5] 49 U.S.C. App. 1, *et seq.* (2000).

[6] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Estoblishment, Approvol, ond Enforcement of Electric Reliobility Stondards,* 71 FR 8662 (Feb. 17, 2006), III FERC Stats. & Regs. ¶ 31,204 (Feb. 2, 2006); *reh'g granted in port and denied in part,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), 114 FERC ¶ 61,328 (Mar. 30, 2006).

(collectively, draft audit report) indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audit staff communicates this response to the Commission along with the draft audit report. The Commission may make determinations on the merits in a public order with respect to the findings and proposed remedies contained in the draft audit report that are not in dispute. The Commission will publicly notice the disputed items and provide the audited person the opportunity to elect in writing a shortened procedure, which consists of a submission of memoranda, or a trial-type hearing, by a date certain. The audited person may timely respond to the notice in a public filing by electing in writing the shortened procedure or the trial-type hearing.

3. The Commission will honor the audited person's timely election (unless a trial-type hearing is chosen and there are in the Commission's judgment no disputed issues of material fact requiring a trial-type hearing) and issue a public notice setting the schedule for submission of memoranda, in the case of the shortened procedure, or referring the matter to the Chief Administrative Law Judge, in the case of the trial-type hearing.

4. On March 20, 2006, Edison Electric Institute (EEI) timely filed the only request for rehearing and clarification of Order No. 675.[7] The Commission grants the request for rehearing and clarification filed by EEI in four respects. First, the Commission grants EEI's request for clarification regarding the scope of contested audit matters. Second, the Commission grants EEI's request for clarification that contested audit procedures will not be used to amend Final Rules. Third, the Commission grants EEI's request for clarification by specifying that an audited person shall have at least 15 days to provide in writing to the audit staff a response to the draft audit report indicating findings or proposed remedies with which it disagrees. Fourth, the Commission grants the substance of EEI's proposal to change the regulatory text regarding the time within which an audited person must elect either the shortened procedure or a trial-type hearing. In all other respects, as explained below, the Commission denies EEI's request for rehearing and clarification.

[7] *See* 16 U.S.C. 825l(a) (2000).

II. Discussion

A. Scope of Contested Audit Matters

5. In Order No. 675, the Commission stated that entities other than the audited person and the audit staff may participate in the shortened procedure or the trial-type hearing.[8] The Commission explained that an entity other than the audited person may have an interest in the outcome of the contested audit proceeding and may have information about the audited person's operations or proposed remedy that would inform the Commission's determination regarding the contested issue.[9]

1. Request for Rehearing or Clarification

6. EEI requests clarification, or in the alternative, rehearing, that the Final Rule is not intended to allow intervenors to raise new issues in response to a public notice of a contested audit report.[10] EEI expresses concern that intervenors may seek to intervene in a contested audit proceeding and raise issues that are beyond the scope of contested issues raised by the audited person. EEI asserts that allowing intervenors to expand the scope of audit proceedings in such a manner would tend to dilute the due process rights afforded by Order No. 675.[11] To address this concern, EEI urges that the Final Rule should be clarified to permit intervenors only to raise arguments or facts that directly relate to a finding or remedy already at issue in the contested audit proceeding. EEI contends that, under the FPA and consistent with due process norms, new issues must be raised in a section 206 complaint[12] filed by the interested entity.[13]

[8] Order No. 675 at P 11, 38.

[9] Order No. 675 at P 11.

[10] EEI Request for Rehearing and Clarification at p. 6.

[11] EEI Request for Rehearing and Clarification at pp. 5–7.

[12] *See* 16 U.S.C. 824e (2000).

[13] In support of its argument, EEI cites *Public Service Commission of N.Y.* v. *FERC*, 642 F.2d 1335, 1345 (DC Cir. 1980), for the proposition that section 4(e) of the NGA "cannot be used by the Commission to institute any change in a ratemaking component * * * that does not represent at least partial approval of the change for which the enterprise had petitioned in its filing. If the Commission seeks to make such changes, it has no alternative save compliance with the strictures of section 5(a)." EEI also cites *Public Service Commission of Kentucky* v. *FERC*, 397 F.3d 1004, 1012 (DC Cir. 2005), for the proposition that "[t]he Due Process Clause and the [Administrative Procedure Act] require that an agency setting a matter for hearing provide parties 'with adequate notice of the issues that would be considered, and ultimately resolved, at that hearing.'"

2. Commission Determination

7. The Commission grants EEI's request for clarification. An interested entity that has successfully intervened in a proceeding will be limited to arguments or facts that directly relate to a finding or proposed remedy already at issue in the contested audit proceeding that the audited person has appropriately designated and that is noted in the Commission's initial order concerning the audit report or similar document.[14] Permitting an intervenor to raise extraneous issues could deflect the focus of the contested proceeding from the designated issue or issues, could cause unnecessary expense, litigation and delay, and could require an audited person to litigate issues of which it had no notice at the time it made its election to challenge a finding or proposed remedy in the audit report.

B. Orders in Contested Audit Proceedings

1. Request for Rehearing or Clarification

8. EEI requests that the Commission clarify that it does not intend the Final Rule's language regarding the precedential effect of contested audit orders to create or support the ability to amend, by individual adjudication, rules adopted through rulemaking proceedings.[15] EEI contends that such a result would be contrary to law. EEI asserts that courts have struck down agencies' attempts to use clarification and interpretations as a way of imposing more stringent requirements and setting higher standards on the regulated community.[16] EEI also asserts that courts have rejected agencies' efforts to enforce new policies by gradually imposing more restrictive standards and higher burdens without allowing the regulated community to participate or object.[17]

2. Commission Determination

9. The Commission grants EEI's request for clarification. Orders that the

[14] This limitation is consistent with Commission practice. For example, the Commission has rejected the timely-filed or otherwise accepted pleadings of intervenors where they addressed issues that were not relevant to the Commission's disposition of a seller's market-based rates application and where they related to issues that were otherwise outside the scope of the proceeding. *See H.Q. Energy Services (U.S.) Inc.*, 81 FERC ¶ 61,184 at 61,809 n.5 (1997).

[15] EEI Request for Rehearing and Clarification at p. 9.

[16] To support this position, EEI cites *Alaska Professional Hunters Ass'n* v. *FAA*, 177 F.3d 1030, 1034 (DC Cir. 1999) (*Alaska Professional Hunters Ass'n*).

[17] To support this position, EEI cites *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015, 1024 (DC Cir. 2000) (*Appalachian Power*).

Commission issues in contested audit proceedings will not amend rules adopted through rulemaking proceedings.

C. Clarification of Time Frames for Audited Person To Respond

1. Request for Rehearing and Clarification

10. EEI states that if the Commission intended to require a 30-day time frame in which the audited person must provide in writing to the audit staff a response to the draft audit report noting the items with which it disagrees, then EEI seeks rehearing of that determination. EEI states that the time frame in which the audited person must provide in writing to the audit staff a response to the draft audit report indicating items with which it disagrees should be flexible and that it should be determined by the Commission audit staff and the audited person based on the facts of the audit. EEI also asks the Commission to clarify the regulatory text to make it clear that after the public issuance of the Commission's initial order concerning an audit report, the audited person will have 30 days to respond to the Commission with the selection of a shortened procedure or a trial-type proceeding.[18]

2. Commission Determination

11. The Commission grants EEI's request for clarification in part. In Order No. 675, the Commission did not specify a time frame in which the audited person must provide in writing to the audit staff a response to the draft audit report noting the items with which it disagrees. Instead, the pertinent regulation stated that the audited person's written response must be "timely." The Commission intended that the audit staff would determine the length of time an audited person would have to file a written response indicating the findings or proposed remedies with which it disagrees. The relevant regulatory text at §§ 41.1, 158.1, 286.103 and 349.1 reads as follows:

> Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedies, or both, in any combination, with which it disagreed.

12. The Commission declines to adopt EEI's suggestion that both the audited person and the audit staff determine the time period in which the audited person shall provide a written response to the audit staff indicating findings or proposed remedies with which the audited person disagrees. If the time period for the audited person's submission of this response were subject to agreement between the audited person and the audit staff, there might be instances in which the audited person and the audit staff would fail to agree, resulting in inappropriate delay. The Commission recognizes, however, that a certain time period for the audited person to provide a written response indicating findings and proposed remedies with which it disagrees, with the possibility for additional time if deemed necessary by the Commission, would provide a measure of assurance to the audited person that it will have sufficient time to make this written response to audit staff. The Commission determines that 15 days to make this written response will be sufficient time in the large majority of cases in which the audited person and audit staff do not disagree regarding the contents of the draft audit report. Even in the remaining instances in which the audited person and the audit staff disagree regarding the contents of the draft audit report, the discussion between them regarding the contents of the draft audit report preceding the commencement of the 15-day period should render the allotted time sufficient for the audited person to indicate the areas of disagreement. In instances in which the audited person may require more than 15 days to provide a written statement of findings or proposed remedies with which it disagrees to audit staff, the audit staff may provide in writing to the audited person additional time at the time the draft audit report is sent. The audited person may also move the Commission for additional time. Consequently, the Commission will add two sentences to follow the second sentence of §§ 41.1, 158.1, 286.103, and 349.1 quoted above to read as follows: "*The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown.*"

13. In Order No. 675, the Commission intended to indicate that an audited person shall have 30 days to respond to a Commission order with a selection of a shortened procedure or a trial-type proceeding.[19] The 30-day provision in the last sentence quoted in paragraph 11 above is meant to convey this intention. To remove any possible ambiguity, the Commission will amend the last sentence of §§ 41.1, 158.1, 286.103, and 349.1 quoted above, to read as follows: "The Commission shall provide the audited person 30 days to respond *to the initial Commission order concerning a notice of deficiency, audit report or similar document* with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed."

D. Precedential Effect of Decisions in Contested Audit Matters

14. In Order No. 675, the Commission stated that a Commission order that resolves a contested audit matter would be precedent for non-parties. The Commission explained that an audited person who challenges a finding or proposed remedy in an audit report using the procedure in the Final Rule is participating in a contested, on-the-record proceeding, and, like any other such proceeding before the Commission, the legal reasoning and conclusions of the resulting order would apply to non-parties.[20]

1. Request for Clarification

15. EEI requests clarification that the Commission will not apply any ruling on a contested audit matter to an entity that was not a party to the adjudication unless and until the non-party entity has been afforded an opportunity to challenge the basis of the ruling as it applies to that entity. EEI states that the language in the Final Rule regarding the precedential value of the Commission's rulings on a contested audit may not be clear. According to EEI, judicial precedent clearly supports its position. EEI relies principally upon *Florida Gas Transmission Co.* v. *FERC*, 876 F.2d 42, 44 (5th Cir. 1989) (*FGT*). In that case, the

[18] EEI Request for Rehearing and Clarification at pp. 10–11.

[19] Order No. 675 at P 24–25.

[20] Order No. 675 at P 32.

United States Court of Appeals for the Fifth Circuit held that the Commission did not sufficiently substantiate its decision to grant individual NGA section 7(c) certificates for interruptible service for a one-year term instead of the multi-year terms requested by FGT. The Commission had relied on a policy of granting one-year terms for such certificates. The court stated that due process

> guarantees that parties who will be affected by the general rule be given an opportunity to challenge the agency's action. When the rule is established through formal rulemaking, public notice and hearing provide the necessary protection. But where, as here, the rule is established in individual adjudications, due process requires that affected parties be allowed to challenge the basis of the rule. FERC must be able to substantiate the general rule.[21]

2. Commission Determination

16. The Commission denies EEI's request for clarification. The Commission plainly stated in the Final Rule that a Commission order that resolves a contested matter has precedential effect.[22] As the Commission noted in Order No. 675, "the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency." [23] The long-settled principle of Federal administrative law is that "[a]bsent express congressional direction to the contrary, agencies are free to choose their procedural mode of administration." [24]

17. *FGT* does not require a different conclusion. The issue in that case was whether the Commission could rely upon its one-year policy for denying requests for longer term individual certificates or whether the Commission needed to provide an explanation specific to FGT's circumstances and failed to do so. On remand, the Commission gave an explanation [25] that the court subsequently concluded was sufficient.[26] To the extent that the Commission makes a determination in a contested audit matter and subsequently applies that determination to an audited person who had not been a party in the prior proceeding, the Commission will provide a reasoned explanation to comply with applicable legal standards.

18. In sum, just like other Commission contested, on-the-record proceedings that provide third parties an opportunity to intervene and participate, we find that Commission determinations in contested audit proceedings are precedent for non-parties in subsequent proceedings. And, as in such proceedings, the Commission will explain the application of that precedent on the basis of the record developed in subsequent proceedings.

E. Codifying the Determination in the Preamble of the Final Rule

1. EEI's Request for Rehearing and Clarification

19. EEI asks that the Commission include a number of its determinations contained in the Final Rule in the regulatory text. EEI states that the types of matters addressed in the Final Rule that were not included in the regulatory text have been included in the Commission's regulations on other occasions. As an example, EEI cites § 1b.16 of the Commission's regulations,[27] which pertains, in part, to the right of a person who is compelled to appear, or who appears in person at the request or permission of the Investigating Officer, to be accompanied, represented and advised by counsel, subject to certain additional provisions. EEI notes in this regard that in the Final Rule, the Commission stated that an attorney may be present during interviews of an audited person's employees. EEI contends that a person should not have to refer to the language of the Final Rule, but instead should be able to consult the Commission's regulations, to learn this information.[28]

20. EEI identifies seven matters that it states are discussed in the Final Rule but not reflected in the regulatory text. These matters are (1) The right to have counsel present during an audit; (2) use by the Commission of the standard set forth in § 385.214(b) of its regulations [29] to govern interventions in contested audit proceedings and the disallowances of interested persons to intervene until after the Commission issues the notice described in Part 41 of the Commission's regulations; (3) confidential treatment of information provided in an audit; (4) the absence of discovery in the shortened procedure and the applicability of Part 385 of the Commission's regulations [30] with respect to discovery in a trial-type proceeding; (5) the precedential value of an audit report and an order approving an uncontested audit report; (6) the 30-day time frame for an audited person's response; [31] and (7) protection of confidential treatment in trial-type proceedings.

2. Commission Determination

21. EEI has not provided a compelling reason for the Commission to include the noted portions of the Final Rule in the regulatory text. In particular, four of the issues EEI raises are not germane to the procedural matters addressed in the regulatory text. The right to counsel, confidential treatment, precedential value of an audit report and a Commission order approving an uncontested audit report, and protection of confidential treatment issues do not pertain to the procedure an audited person may use to challenge findings or proposed remedies in an audit report. Accordingly, it would not be appropriate to include them in the regulatory text of the parts of Title 18 involved in this rulemaking. The Commission has exercised its discretion in past proceedings to clarify matters in final rules and in orders on rehearing of final rules without inserting those clarifications in the underlying regulations.[32]

22. The Commission's statements in the Final Rule regarding interventions likewise do not warrant inclusion in the regulatory text. The Commission stated that it will use the standard stated in § 385.214(b),[33] which is in subpart B of Part 385 of the Commission's regulations, for permitting interested

[21] *FGT*, 876 F.2d at 44 (citations omitted). EEI also cites *PPL Wollingford Energy LLC* v. *FERC*, 419 F.3d 1194 (DC Cir. 2005). In that case, the court vacated orders of the Commission on the grounds that the Commission did not directly respond to or address arguments the petitioner in that proceeding had made before the Commission.

[22] Order No. 675 at P 32.

[23] *SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947).

[24] *Davis* v. *EPA*, 336 F.3d 965 (9th Cir. 2003).

[25] *Florido Gas Transmission Co.*, 49 FERC ¶ 61,375 (1989).

[26] *Monsonto Co.* v. *FERC*, 963 F.2d 827 (5th Cir. 1992).

[27] 18 CFR 1b.16 (2005).

[28] EEI Request for Rehearing and Clarification at pp. 11–14.

[29] 18 CFR 85.214(b) (2005).

[30] 18 CFR part 385 (2005).

[31] EEI's request with respect to the 30-day time frame for an audit person's response is addressed supra P 11–13.

[32] *See, e.g., Regulotions Implementing Energy Policy Act of 2005; Pre-filing Procedures for Review of LNG Terminols ond Other Noturol Gas Facilities*, Order No. 665, 70 FR 60426 (Oct. 18, 2005), FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,195 (Oct. 7, 2005) ("In view of the clarification and regulatory text revisions discussed above, the Commission does not believe that it is necessary to include in the final regulations additional criteria or definitions for the Director's use in reaching a determination whether prospective modifications to an existing or approved LNG terminal should be subject to a mandatory pre-filing process."); *Stondords of Conduct for Tronsmission Providers*, Order No. 2004–A, 69 FR 23562 (Apr. 29, 2004), FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,161 (Apr. 16, 2004) ("The Commission denies National Fuel-Supply's request to revise the regulatory text, but clarifies that by using the term 'relate' in the phrase 'if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service,' the Commission intended to include the corresponding transportation service agreements that result from a 'request.' ").

[33] 18 CFR 385.214(b) (2005).

entities to file memoranda in the shortened procedure as it uses to permit interventions in other proceedings. Subpart B of Part 385 "applies to any pleading" [34] and thus no addition to the regulatory text is needed to provide certainty.

23. The Commission's statements in the Final Rule regarding discovery also do not warrant inclusion in the regulatory text. The regulatory text accompanying the Final Rule does not authorize discovery in the shortened procedure. The Final Rule clarified that discovery is not available in the shortened procedure at EEI's request.[35] Again, adding language in the regulatory text will not provide certainty. As is true for adding regulatory text regarding interventions, adding regulatory text regarding discovery in trial-type proceedings would also be redundant, in this case to the rules in Part 385 of the Commission's regulations.

24. The Commission does not agree with EEI's contention that a provision in Part 1b of the Commission's regulations, which pertains to a person's right to have counsel present under certain circumstances in an investigation, suggests that the revised Part 41 should also address issues relating to counsel, in addition to other issues. Part 1b contains provisions describing the Commission's policy and procedures for investigations conducted under the statutes it administers. [36] Part 41 does not describe the audit process. Instead, Part 41 sets forth the procedure an audited person can use to challenge audit findings or proposed remedies with which it disagrees. In sum, by declining to include in the regulatory text the topics EEI references the Commission is not acting in a manner inconsistent with its promulgation of Part 1b.

F. Separation of Functions Issues

1. Request for Rehearing and Clarification

25. In its request for rehearing and clarification, EEI asks the Commission to issue a policy statement, with an opportunity for public comment, to consider and determine the appropriate relationship between the Commission's audit and enforcement staffs during audits, shortened or trial-type procedures for contested audit matters, and formal and informal investigations under Part 1b of the Commission's regulations. EEI asserts that the time is ripe for such a policy statement because of developments and changes in the roles and functions of the audit and enforcement staffs since the Commission's issuance of its Policy Statement on Separation of Functions [37] in 2002 and the Commission's new and substantial enforcement and remedial authority under the Energy Policy Act of 2005 (EPAct 2005).[38] EEI states that the purpose of the policy statement it proposes would be for the Commission to examine the relationship of the audit and enforcement staffs to ensure that their work is fair and consistent with due process rights and separations of functions during every possible stage of the audit process and any subsequent investigatory or enforcement action. EEI states that a policy statement, with opportunity for public comment, would help build an appropriate Commission record and basis for balancing separation of functions and due process requirements.[39] Finally, EEI asserts that a case the Commission cited in the Final Rule, *Trans Alaska Pipeline System*, 9 FERC ¶ 61,205 (1979), which states that the Commission's audit and investigatory staffs may freely share information, is no longer fully relevant.[40]

2. Commission Determination

26. The Commission declines EEI's proposal that the Commission issue a policy statement concerning the relationship of its audit and investigations staffs. As an initial matter, EEI's proposal is not related to the Commission's promulgation of a new procedure for audited persons seeking to challenge audit findings or proposed remedies, which is the subject of Order No. 675. Moreover, the Commission already has a policy statement on Separations of Functions,[41] which is as applicable today as it was when it was issued in 2002. Nothing in EPAct 2005 affects the operation of Rule 2202,[42] which was the focus of that policy statement.

27. For its part, EEI's request is not supported by facts. EEI does not identify any specific practice or activity that warrants examination. EEI refers to developments and changes since 2002, but does not state what material developments and changes have occurred that compel the public examination of separation of functions issues that EEI requests. EPAct 2005 provided the Commission with enhanced authority to assess civil penalties for violations of the FPA, NGA and NGPA, but EEI does not suggest why this authority should trigger the policy statement it seeks.[43]

28. *Trans Alaska Pipeline System* remains relevant to the issue of whether the audit staff and investigative staff may share information. In that proceeding, the Trans Alaska Pipeline System owners asked that the Commission forbid communications between the valuation and audit staff on the one hand and the rate staff on the other. The Commission determined, among other things, that communications between these two staffs would not constitute impermissible, *ex parte* communications and that the staffs need not be separated to ensure the integrity of the valuation.[44] The Commission approvingly quoted from a prior proceeding in which it endorsed the sharing of information among different staffs:

> Administrative agencies were brought into being to supply expertise and to minimize formalism. Walls of separation between those who litigate and those who investigate do not serve those ends. Nor does due process require them. All that due process mandates in situations of this kind is that adjudicative proceedings be decided solely on the basis of the records developed in them.[45]

29. Efficiency and sound administrative practice favors the sharing of information between the audit staff and investigative staff, and no entity suffers a cognizable due process harm as a result. We see no need at this

[34] 18 CFR 385.201 (2005).

[35] Order No. 675 at P 9, 12. The Final Rule also clarified that the applicable standards under Part 385 of the Commission's regulations will govern if the trial-type procedure is used. Order No. 675 n.25.

[36] *Rules Relating to Investigations*, Order No. 8, 43 FR 27174 (Jun. 23, 1978), FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,012 (1978).

[37] 101 FERC ¶ 61,340 (2002).

[38] P.L. No. 109–58, 119 Stat. 594 (2005).

[39] EEI Request for Rehearing and Clarification at pp. 14–15. According to EEI, the Commission has not established a sufficient basis and record with respect to this issue to satisfy the reasoned decision making standard under the Administrative Procedure Act, 5 U.S.C. 706 (2000).

[40] EEI Request for Rehearing and Clarification at pp. 15–16.

[41] 101 FERC ¶ 61,340 (2002).

[42] 18 CFR 385.2202 (2005).

[43] Since the enactment of EPAct 2005, the Commission has issued a number of statements and orders to provide guidance to the regulated community. For example, in October 2005, the Commission issued a Policy Statement on Enforcement to provide guidance and regulatory certainty regarding the Commission's enforcement of the statutes, orders, rules and regulations it administers. *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005). In November 2005, the Commission issued an Interpretive Order Regarding No-Action Letter Process to clarify that members of the public may request and obtain no-action letters with respect to whether staff will recommend that the Commission take no enforcement action with respect to specific proposed transactions, practices or situations that may raise issues under certain Commission regulations. *Informal Staff Advice on Regulatory Requirements*, 113 FERC ¶ 61,174 (2005).

[44] *Trans Alaska Pipeline System*, 9 FERC at 61,371–372.

[45] *Id.* at 61,372, quoting *Tenneco, Inc.*, 7 FERC ¶ 61,258 at 61,541–542 (1979) (footnotes omitted).

time to reevaluate the interaction between these staffs.

The Commission orders: EEI's petition for rehearing and clarification is granted in part and denied in part as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

List of Subjects

18 CFR Part 41

Administrative practice and procedure, Electronic utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 158

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Parts 286 and 349

Administrative practice and procedure, Natural gas, Price Controls.

■ In consideration of the foregoing, the Commission amends parts 41, 158, 286 and 349, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

PART 41—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 41.1 is revised to read as follows:

§ 41.1 Notice to audited person.

(a) *Applicability.* This part applies to all audits conducted by the Commission or its staff under authority of the Federal Power Act except for Electric Reliability Organization audits conducted pursuant to the authority of part 39 of the Commission's regulations.

(b) *Notice.* An audit conducted by the Commission's staff under authority of the Federal Power Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond to the initial Commission order concerning a notice of deficiency, audit report or similar document with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

PART 158—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 3. The authority citation for part 158 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

■ 4. Section 158.1 is revised to read as follows:

§ 158.1 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond to the initial Commission order concerning a notice of deficiency, audit report or similar document with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

PART 286—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 5. The authority citation for part 286 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*; 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

■ 6. Section 286.103 is revised to read as follows:

§ 286.103 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Policy Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond to the initial Commission order concerning a notice of deficiency, audit report or similar document with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

PART 349—DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 7. The authority citation for part 349 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1, *et seq.*

■ 8. Section 349.1 is revised to read as follows:

§ 349.1 Notice to audited person.

An audit conducted by the Commission or its staff under authority of the Interstate Commerce Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond to the initial Commission order concerning a notice of deficiency, audit report or similar document with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

[FR Doc. 06–4814 Filed 5–23–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48, 50, and 75

RIN 1219–AB46

Emergency Mine Evacuation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration is extending the comment period for the Emergency Temporary Standard on Emergency Mine Evacuation published on March 9, 2006 (71 FR 12252). This action is in response to a request from the public.

DATES: The comment period will close on June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *Silvey.Patricia@dol.gov.*

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration (MSHA) received a request to extend the public comment period for 60 days so that interested parties could adequately address issues contained in MSHA's opening statement. MSHA is conducting this rulemaking under the statutory requirement that the Agency must publish the Final Rule no later than December 9, 2006, that is, 9 months following the publication of the ETS. MSHA is granting a 30-day extension of the comment period (from May 30, 2006, to June 29, 2006) to allow all interested parties additional time to provide input into this important rulemaking. The comment period will close on June 29, 2006; MSHA welcomes comment from all interested parties.

Dated: May 18, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 06–4825 Filed 5–22–06; 9:53 am]
BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–KY–0002–200531(a); FRL–8174–1]

Approval and Promulgation of Implementation Plans; Kentucky; Redesignation of the Boyd County SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 13, 2005, and later clarified in a July 12, 2005, supplemental submittal, the Commonwealth of Kentucky submitted a request to redesignate the sulfur dioxide (SO_2) nonattainment area of Boyd County to attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2. Boyd County is located within the Huntington-Ashland, West Virginia (WV)-Kentucky (KY)-Ohio (OH) Metropolitan Statistical Area (MSA), and the Boyd County SO_2 nonattainment area is comprised of the southern portion of Boyd County. The Commonwealth also submitted, as revisions to the Kentucky State Implementation Plan (SIP), a maintenance plan for the area and a source-specific SIP revision for the Calgon Carbon Corporation facility in Catlettsburg, Kentucky. EPA is approving the redesignation request for the Boyd County SO_2 nonattainment area and the maintenance plan for this area. The maintenance plan provides for the maintenance of the SO_2 NAAQS in Boyd County for the next ten years. EPA is also approving the source-specific SIP revision for the Calgon Carbon Corporation facility.

DATES: This rule is effective on July 24, 2006 without further notice, unless EPA receives adverse written comment by June 23, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–KY–0002, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. Agency Web site: *http://docket.epa.gov/rmepub/* RME. EPA's electronic public docket and comment system is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *difrank.stacy@epa.gov*.
4. Fax: 404.562.9019.
5. Mail: "R04–OAR–2005–KY–0002," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. Hand Delivery or Courier. Deliver your comments to: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–KY–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank, (404) 562–9042, or by e-mail at *difrank.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the Background for the Actions?

On March 3, 1978 (43 FR 8962), EPA designated Boyd County, Kentucky as nonattainment for SO_2 based upon modeling which indicated that both the annual and the 24-hour SO_2 NAAQS were being violated. The 1978 nonattainment designation covered Boyd County in its entirety. On November 2, 1979 (44 FR 63104), following the completion of a monitoring study and at the request of the Commonwealth of Kentucky, EPA redefined the SO_2 nonattainment area to include only the southern portion of Boyd County (e.g., that part of the County lying south of Universal Transverse Mercator (UTM) Northing Line 4251 km). Thus, after 1979, the Boyd County SO_2 nonattainment area has been comprised of only the southern portion of the County. The major sources of SO_2 emissions impacting the Boyd County SO_2 nonattainment area are Calgon Carbon Corporation's carbon reactivation facility in Catlettsburg, Kentucky (Calgon Carbon Corporation's facility) and a petroleum refinery in Catlettsburg operated by Catlettsburg Refining, LLC, a subsidiary of Marathon

Ashland Petroleum LLC (Marathon Ashland's petroleum refinery).

On the date of enactment of the 1990 Clean Air Act (CAA or the Act) Amendments, SO_2 areas meeting the conditions of section 107(d) of the Act, including pre-existing SO_2 nonattainment areas, were designated nonattainment for the SO_2 NAAQS by operation of law. As a result, the Boyd County SO_2 nonattainment area remained nonattainment for the SO_2 NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act, including full approval of a maintenance plan for the area. On May 13, 2005, and later clarified in a July 12, 2005, supplemental submittal, Kentucky submitted a request to redesignate the Boyd County SO_2 nonattainment area to attainment status. The request includes modeling and monitoring data that demonstrates attainment of the SO_2 NAAQS. The modeling analysis includes an inventory of SO_2 emissions sources located within fifty kilometers (km) of the nonattainment area. The Commonwealth also submitted a maintenance plan as a SIP revision which provides for maintenance of the SO_2 NAAQS in Boyd County for the next ten years. The maintenance plan includes a list of emissions sources, their emission rates and other stack parameters. In addition, Kentucky submitted a source-specific SIP revision to incorporate specified emissions points and their associated emissions limits (as set out in the Calgon Carbon Corporation facility's 2005 title V operating permit) into the Kentucky SIP.

II. What Actions is EPA Taking?

Through this rulemaking, EPA is taking several related actions. EPA is redesignating the Boyd County SO_2 nonattainment area to attainment status because Kentucky's redesignation request meets the requirements of section 107(d)(3)(E) of the CAA. EPA is also approving Kentucky's SIP revision which provides a maintenance plan for Boyd County (such approval being one of the CAA criteria for redesignation to attainment status) because the plan meets the requirements of CAA section 175A. Finally, EPA is approving the source-specific SIP revision for Calgon Carbon Corporation's facility, which incorporates specified emissions points and their associated emissions limits (as detailed in section III below) into the Kentucky SIP.

III. What are the Criteria for Redesignation and Approval of the Maintenance Plan?

Section 107(d)(3)(E) of the CAA, as amended, specifies five requirements that must be met to redesignate an area to attainment. They are as follows:

1. The area must meet the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k);
3. The area must show improvement in air quality due to permanent and enforceable reductions in emissions;
4. The area must meet all applicable requirements under section 110 and part D of the Act; and
5. The area must have a fully approved maintenance plan pursuant to section 175A.

EPA has reviewed the redesignation request submitted by the Commonwealth for the Boyd County SO_2 nonattainment area and finds that the request meets the five requirements of section 107(d)(3)(E).

1. The Data Shows Attainment of the NAAQS for SO_2 in the Boyd County Nonattainment Area

Boyd County's 1979 nonattainment designation was based upon monitored values recorded in the area in the mid 1970s. No ambient air quality violations of the SO_2 NAAQS have occurred in recent years due to the implementation of permanent and enforceable measures to reduce ambient SO_2 levels. In particular, since the time of the nonattainment designation, reductions in SO_2 emissions have occurred at the Marathon Ashland petroleum refinery and at the Calgon Carbon Corporation facility—both located in Catlettsburg, Boyd County, Kentucky.

There is currently one monitor operating within the Boyd County SO_2 nonattainment area and the redesignation request for the area is based upon the most recent five years of air quality data (2001–2005) from that monitor. See Table 1 below. The data was collected and quality assured in accordance with 40 CFR part 58, and entered into the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). The primary SO_2 NAAQS consists of an annual mean of 0.030 parts per million (ppm), not to be exceeded in a calendar year, and a 24-hour average of 0.14 ppm, not to be exceeded more than once per calendar year. The secondary SO_2 NAAQS is a 3-hour average of 0.5 ppm, not to be exceeded more than once per calendar year. The data indicate that the County's ambient air quality attains the annual and 24-hour primary SO_2 standards, as well as the 3-hour SO_2 secondary standard. Kentucky's May 2005 submittal also includes a table in Appendix C, summarizing the monitoring data that has been collected in Boyd County since 1975. The Commonwealth's submittal is included and available for review in both the hard copy and E-Docket for this rulemaking.

TABLE 1.—SO_2 DATA FOR BOYD COUNTY AMBIENT MONITORS

Monitor ID	Year	2nd max 24-hr (ppm)	#OBS >0.14 ppm (365 µg/m³)	2nd max 3-hr ppm	#OBS >0.5 ppm (1300 µg/m³)	Annual (ppm)	#OBS >0.03 ppm (80 µg/m³)
21–019–0017	2001	.013	0	.038	0	.0045	0
	2002	.020	0	.041	0	.0039	0
	2003	.023	0	.063	0	.0038	0
	2004	.018	0	.061	0	.0041	0
	2005	.023	0	.048	0	.0060	0

For SO_2, monitoring data alone is generally insufficient to assess an area's attainment status. EPA's guidance memorandum addressing redesignation requests states that for SO_2 and specified other pollutants, "dispersion modeling will generally be necessary to evaluate comprehensively sources' impacts." See "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director Air Quality Management Division, to EPA Regional Air Directors, dated September 4, 1992. Typically, attainment planning for SO_2

involves dispersion modeling used to demonstrate that the emission limits adopted by the state are sufficient to assure attainment. With such modeling, EPA can generally determine an area to be attaining the standard without further modeling, provided monitoring data also support that determination.

An inventory of significant SO_2 emissions sources located within fifty km of the Boyd County SO_2 nonattainment area is contained in the May 2005 maintenance plan submitted by Kentucky. The SO_2 emissions from these sources were used in a modeling demonstration to show maintenance of the SO_2 NAAQS for at least ten years. A summary of the modeling demonstration is presented below. The complete details of the emissions inventory are contained in Appendix F of Kentucky's 2005 submittal.

Maximum allowable permitted emissions limits were used for the Boyd County modeling demonstration. Using the maximum allowable emissions limits (that are not expected to change) results in a current and a future projected inventory which are the same. These emissions limits are established in operating conditions contained in federally enforceable permits. In addition, certain source-specific emissions limits (discussed below) for the Calgon Carbon Corporation facility are being incorporated, through this rulemaking, into the Kentucky SIP. Any future increases in emissions and/or significant changes to the stack configuration parameters from those that were modeled would be subject to the Kentucky SIP's minor source New Source Review (NSR) and/or Prevention of Deterioration (PSD) requirements, which include demonstrating that the SO_2 NAAQS and applicable PSD increments are protected.

The Commonwealth's air dispersion modeling was developed according to EPA guidance at Appendix W of 40 CFR part 51: Guideline on Air Quality Models (i.e. Modeling Guideline). The American Meteorological Society (AMS)/United States Environmental Protection Agency (EPA) Regulatory Model Improvement Committee (AERMIC) Model (AERMOD) was used in the demonstration. The modeling system consists of 3 components: AERMOD (the air dispersion model), the AERMOD meteorological preprocessor (AERMET), and the AERMOD mapping program for processing terrain and generating receptor elevations (AERMAP). The AERMOD modeling system can be found on the Support Center for Regulatory Models (SCRAM) Internet site, i.e. *http://www.epa.gov/ttn/scram/*. During the development of the redesignation modeling and at the time of the submittal of the SIP and its supplement, AERMOD was not an EPA regulatory model but was proposed to be included as a preferred EPA model in the April 20, 2000 **Federal Register** (65 FR 21506). The Kentucky Division for Air Quality (KDAQ) requested approval for use of the AERMOD model in a letter dated October 20, 2003, and EPA approved the request in a letter to the Commonwealth dated November 12, 2003. AERMOD was promulgated as a regulatory air dispersion model in the November 9, 2005 **Federal Register** (70 FR 68218).

Meteorological data used in this modeling demonstration consists of: (1) Surface level date collected on-site at the Cooper School tower near Catlettsburg, Kentucky, which is within the nonattainment area and which has been supplemented with data from the Huntington/Tri-State Airport National Weather Service (NWS) station as needed; and (2) upper-air data from the Huntington/Tri-State Airport NWS station. These meteorological data were prepared for use with AERMOD using the AERMET preprocessor. As indicated in the emissions inventory discussion above, significant SO_2 emissions sources located within fifty km of the nonattainment area were used in the modeling demonstration. Maximum allowable and/or permitted SO_2 emissions rates were used as inputs to the model for each source specifically modeled.

Compliance with the three averaging periods for the SO_2 NAAQS (i.e., 3-hour, 24-hour and annual) was indicated in the modeling demonstration. The model-predicted concentration, when added to the background ambient air quality monitored concentrations, were less than the three averaging periods. These modeling results for the three averaging periods for the SO_2 NAAQS are presented in Table 2 below. A more detailed discussion of the modeling demonstration is included in the Kentucky SIP submittal, including the complete details of all the modeling inputs and results.

TABLE 2.—SUMMARY OF SO_2 MODELING RESULTS FOR BOYD COUNTY, KENTUCKY NONATTAINMENT AREA

[Micrograms per cubic meter]

Averaging period	Maximum modeled concentration	Background concentration	Total	EPA NAAQS	Percent of NAAQS standard (percent)
3-hour	1060.18	103.4	1163.58	1300	89.5
24-hour	306.66	43.2	349.86	365	95.9
Annual	66.1	11.0	77.1	80	96.4

EPA's review of both the monitoring and modeling data indicates that attainment of the SO_2 NAAQS has been demonstrated for the Boyd County SO_2 nonattainment area.

2. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has fully approved, under section 110(k) of the Act, the applicable Kentucky SIP for the Boyd County SO_2 nonattainment area. Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the general SIP requirements set out in CAA section 110 for all areas, including Boyd County. The historical record of EPA's approval of Kentucky's SIP can be found at 40 CFR 52.920. In addition, EPA is approving through this rulemaking, the Commonwealth's attainment demonstration, maintenance plan, and source-specific SIP revision related directly to the Boyd County SO_2 nonattainment area. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memo, p. 3 *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See also 68 FR 25426 (May 12, 2003) and citations therein.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

EPA has determined that the improvement in air quality in the Boyd County SO_2 nonattainment area is due to permanent and enforceable emission reductions. Emissions inventories contained in the attainment demonstration represent emissions limitations that are federally enforceable because they are either SIP requirements or permit limitations. For example, the primary sources of SO_2 emissions in the Boyd County SO_2 nonattainment area, Marathon Ashland's petroleum refinery and Calgon Carbon Corporation's facility, are subject to SO_2 limitations in permits that have resulted in significant SO_2 reductions that are permanent and enforceable.

Marathon Ashland's petroleum refinery reduced SO_2 emissions by 24 percent in 1993 and these reductions were used in the modeled attainment demonstration submitted by the Commonwealth in conjunction with its redesignation request. In addition, the petroleum refinery is subject to a 2001 Federal consent decree requiring implementation of certain environmental measures, along with emissions limitations and monitoring requirements which result, among other things, in further SO_2 emissions reductions from the refinery. The consent decree requires that these further measures, limitations, and monitoring requirements be incorporated into an appropriate Federally enforceable permit and, pursuant to this requirement, the Commonwealth issued a synthetic minor permit to Marathon Ashland for the petroleum refinery in Catlettsburg on March 29, 2002. The synthetic minor permit incorporates the consent decree's emissions limitations and other specified standards and measures for a number of pollutants, including SO_2, making them permanent and enforceable.

Calgon Carbon Corporation's facility in Catlettsburg is also subject to SO_2 emissions limitations and other reporting and recordkeeping requirements that are permanent and enforceable. Those limitations and requirements are contained in the facility's CAA title V operating permit issued on August 21, 2000, and revised on March 1, 2004, and result in a total SO_2 emissions decrease at the facility of 1,439.67 tons per year (tpy). In addition to the facility's title V permit, specified SO_2 emissions points and their corresponding SO_2 emissions limits which are contained in the Calgon Carbon Corporation title V permit are being, through this rulemaking, incorporated into the Kentucky SIP as a source-specific SIP revision. The specific SO_2 emissions points and associated SO_2 emissions limits which are being incorporated into the SIP are described in Table 3 below.

TABLE 3.—SO_2 EMISSION AND OPERATING CAPS DESCRIPTION FOR CALGON CARBON CORPORATION

[Catlettsburg, Kentucky]

AERMOD emmission point	Calgon emmission point	Affected facility	Title V permit (V–00–015 R2) SO_2 limitation
57	12	B-Line Baker Heater	0.0853 lb/mmBTU.
58	14	B-Line Activator	2.88 lb/hr 12.6 tons/12 month period.
59	21	C-Line Activators	7.72 lb/hr 33.8 tons/12 month period.
62	31	D-Line Bakers	15.0 lb/hr 65.7 tons/12 month period.
63	34	D-Line Activators	15 lb/hr 65.7 tons/12 month period.
64	32	D-Line Baker Heater	0.0853 lb/mmBTU.
65	40	E-Line Baker Heater	0.477 lb/mmBTU.
66	39	E-Line Bakers	15.0 lb/hr 65.7 tons/12 month period.
67	42	E-Line Activators	7.5 lb/hr 32.85 tons/12 months each.
69	64	Package Boiler	1.166 lb/mmBTU.

The SO_2 emissions reductions and emissions limitations resulting from the permits and SIP revisions described above for these existing sources support EPA's determination that the improvement in air quality in the Boyd County SO_2 nonattainment area is due to permanent and enforceable emission reductions. If a new source is constructed or an existing source modified after EPA redesignates the area to attainment, the air quality analyses required under Kentucky's SIP-approved PSD program will ensure that such sources are permitted with emissions limits at or below those needed to assure attainment and maintenance of the SO_2 NAAQS and to protect all applicable PSD increments.

4. The Commonwealth Has Met All Applicable Requirements for the Area Under Section 110 and Part D of the CAA

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans (enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.). Over the years, EPA has approved Kentucky's SIP as meeting the basic requirements of CAA section 110(a)(2). See 40 CFR 52.920. In addition, through this rulemaking, EPA is approving the attainment demonstration and maintenance plan for the Boyd County SO_2 nonattainment area and the source-specific SIP revision for Calgon Carbon Corporation's facility (which incorporates specified SO_2 emissions points and their corresponding SO_2 emissions limits into the Kentucky SIP). Thus, the Commonwealth has met all applicable requirements for the area under CAA section 110(a)(2).

For redesignation, the Boyd County SO_2 nonattainment area must also meet all applicable requirements under part D of title I of the Act. Part D contains the general provisions applicable to SIPs for nonattainment areas. The planning requirements for SO_2 nonattainment areas are set out in subparts 1 (CAA sections 171–179B) and 5 (CAA sections 191–192) of part D of the Act. EPA issued guidance in the General Preamble to title I of the CAA which describes our views on how we will review SIPs and SIP revisions submitted under title I, including those containing SO_2 nonattainment and maintenance area SIP provisions. See 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble also discusses EPA's interpretation of the

title I requirements and lists SO_2 policy and guidance documents.

CAA sections 191 and 192 of subpart 5 address requirements for SO_2 nonattainment areas designated subsequent to enactment of the 1990 CAA Amendments and areas lacking fully approved SIPs immediately before enactment of the 1990 CAA Amendments. The Boyd County SO_2 nonattainment area falls into neither of these categories and is therefore subject to the general nonattainment planning requirements of subpart 1 (CAA sections 171–179B). In particular, CAA section 172 provides, among other requirements, that SIPs must assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented as expeditiously as practicable and shall provide for attainment. As noted above, EPA is approving, through this rulemaking, the Commonwealth's attainment demonstration (including the emissions inventory and enforceable emissions limitations), maintenance plan, and source-specific SIP revision related directly to the Boyd County SO_2 nonattainment area. The emissions inventory and enforceable emissions reductions demonstrated in the Commonwealth's May 2005 submittal, along with the Commonwealth's maintenance plan and source-specific SIP revision for Calgon Carbon Corporation's facility, satisfy subpart 1's nonattainment planning requirements and provide for attainment of the area.

5. The Area Has a Fully Approved Maintenance Plan Under Section 175A of the CAA

Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The maintenance plan is required to be approved as a SIP revision under section 110 of the CAA. Under section 175A(a) of the CAA, the maintenance plan must show that the NAAQS will be maintained for at least ten years after EPA approves a redesignation to attainment. The maintenance plan must also include contingency measures to address any violation of the NAAQS.

In conjunction with its request to redesignate the Boyd County SO_2 nonattainment area to attainment status, Kentucky submitted a SIP revision to provide for the maintenance of the NAAQS in Boyd County for at least ten years after the effective date of redesignation to attainment. The maintenance plan and associated contingency measures are being approved in the SIP with this rulemaking because it satisfies the requirements of CAA section 175A. The emissions inventory and maintenance demonstration elements of this maintenance plan are discussed above. The remaining major elements of the plan are described below.

Continuation of the Monitoring Network

Kentucky has indicated in the submitted maintenance plan that it will continue to monitor SO_2 in the Boyd County area in accordance with 40 CFR parts 53 and 58 to verify continued attainment of the SO_2 NAAQS. The data will continue to be entered into the Air Quality Subsystem of the Aerometric Information Retrieval System.

Verification of Continued Attainment

Kentucky has committed in the maintenance plan to review the monitored data annually, and to review the local monitored meteorological data. KDAQ will also assess compliance of local targeted facilities to verify continued attainment of the area and will review and update the annual emissions inventory for the Boyd County area at a minimum of once every three years.

Contingency Plan

Kentucky has indicated in its submitted maintenance plan that it will rely on ambient air monitoring data in the Boyd County area to track compliance with the SO_2 NAAQS and to determine the need to implement contingency measures. In the event that an exceedance of the SO_2 NAAQS occurs, KDAQ will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. In the event that all sources are found to be in compliance with applicable SIP and permit emission limits, KDAQ will perform the necessary analysis to determine the cause(s) of the exceedance, and determine what additional control measures are necessary to impose on the area=s stationary sources to continue to maintain attainment of the SO_2 NAAQS. KDAQ will inform any affected stationary source(s) of SO_2 of the potential need for additional control measures. If there is a violation of the SO_2 NAAQS, it will notify the stationary source(s) that the potential exists for a NAAQS violation. Within six months, the source(s) must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification. The additional control measures will be submitted to EPA for approval and incorporation into the SIP.

IV. Final Actions

EPA is approving the Commonwealth of Kentucky's request to redesignate the Boyd County SO_2 nonattainment area to attainment because the redesignation request meets the requirements of section 107(d)(3)(E) of the CAA. In addition, EPA is approving Kentucky's maintenance plan for Boyd County as a SIP revision because the plan meets the requirements of section 175A. Finally, EPA approving the Commonwealth's source-specific SIP revision for Calgon Carbon Corporation's Catlettsburg facility as detailed in Section III above.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve these SIP revisions if adverse comments are filed. This rule will be effective on July 24, 2006 without further notice unless EPA receives adverse comment by June 23, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly,

the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

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

Dated: May 12, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920 is amended:

■ (a) In paragraph (d) by adding a new entry at the end of the table for "Calgon Carbon Corporation," and

■ (b) In paragraph (e) by adding a new entry at the end of the table for "Ashland-Huntington Maintenance Plan," to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Calgon Carbon Corporation	V–00–015	05/13/05	05/24/06 [Insert first page number of publication].	The only parts of the permit being approved and incorporated are the SO_2 emission limits from the following emissions points: 12, 14, 21, 31, 34, 32, 40, 39, 42, and 64.

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	*	* *
Kentucky portion of the Ashland-Huntington Sulfur Dioxide Maintenance Plan.	Boyd County	05/13/05	05/24/06 [Insert first page number of publication].	

PART 81—[AMENDED]

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

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

■ 2. In § 81.318, the table entitled "Kentucky SO_2" is amended by revising the entry for "That portion of Boyd County south of UTM northing line 4251 km" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	* *
That portion of Boyd County south of UTM northing line 4251km.	.....	.....	.....	X
* *	*	*	*	* *

* * * * *

[FR Doc. 06–4820 Filed 5–23–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0441; FRL–8174–5]

RIN 2060–AI66

National Emission Standards for the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for the printing and publishing industry which were promulgated on May 30, 1996, under the authority of section 112 of the Clean Air Act (CAA). The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP.

DATES: The direct final rule is effective on August 22, 2006 without further notice, unless EPA receives adverse written comment by June 23, 2006 or by July 10, 2006 if a public hearing is requested by June 5, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which amendments, sections or paragraphs will become effective and which are being withdrawn due to adverse comment. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on June 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0441. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

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

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (D205–01), Research Triangle Park, NC 27711; telephone number (919) 541–0859; fax number (919) 541–0246; e-mail address: *salman.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of potentially regulated entities
Industry	322212	Folding Paperboard Box Manufacturing.
	322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.
	322222	Coated and Laminated Paper Manufacturing.
	322223	Plastics, Foil, and Coated Paper Bag Manufacturing.
	322224	Uncoated Paper and Multiwall Bag Manufacturing.
	322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging.
	323111	Commercial Gravure Printing.
	323112	Commercial Flexographic Printing.
	323119	Other Commercial Printing.
	326192	Resilient Floor Covering Manufacturing.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK), the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ), and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) if adverse comments are filed. Instructions for submitting comments are provided in that document. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective, and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the EPA determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 24, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background

On May 30 1996, we issued the final NESHAP for the printing and publishing industry (61 FR 27140). The final NESHAP established standards to control organic hazardous air pollutant (HAP) emissions from new and existing publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing operations.

Since promulgation of the rule, various issues and questions have been raised by stakeholders and some errors have been identified in the regulatory text. Today's action includes direct final rule amendments that resolve inconsistencies, clarify language, and add additional compliance flexibility. We are also making direct final rule amendments to the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ), and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK). None of the amendments will have any discernable effect on the stringency of the rules.

II. Amendments

The discussion in this section of the preamble pertains to the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK) unless otherwise noted as applying to the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ) or the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO).

A. Applicability

The final rule contains a provision which some sources can use to establish and maintain themselves as area sources of HAP with respect to the Printing and Publishing Industry NESHAP. EPA has received many questions about whether this provision in 40 CFR 63.820(a)(2) is an optional or mandatory provision for sources that wish to establish and maintain themselves as area sources. We have added language to 40 CFR 63.820(a)(2) to emphasize that this is an optional provision. Facilities which establish and maintain themselves as area sources through other mechanisms, as described in 40 CFR 63.820(a)(7), are not subject to this subpart.

B. Designation of Affected Source

In 40 CFR 63.821(a)(3), the final rule provides an option for including "stand-alone coating equipment" in product and packaging rotogravure or wide-web flexographic printing affected sources. We have amended 40 CFR 63.821(a)(3) to now refer to "stand-alone equipment" rather than "stand-alone coating equipment." This change provides the owner or operator with more flexibility for bringing additional equipment into the product and packaging rotogravure or wide-web flexographic printing affected source. This may simplify the compliance demonstration for some affected sources because they will not need to separately quantify the materials used on stand-alone equipment in order to exclude them from the compliance demonstration as is necessary when stand-alone equipment is not part of the product and packaging rotogravure or wide-web flexographic printing affected source. This may also simplify the compliance demonstration for affected sources which vent emissions from product and packaging rotogravure or wide-web flexographic presses and from stand-alone equipment to a common control device.

Consistent with this change, we have also amended 40 CFR 63.3300(a) of the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ) to now refer to "stand-alone equipment" rather than "stand-alone coating equipment."

In response to several requests we have added options in 40 CFR 63.821(a)(4) for including narrow-web flexographic presses and in 40 CFR 63.821(a)(5) for including proof presses in product and packaging rotogravure or wide-web flexographic printing affected sources. These options may simplify the compliance demonstration for some affected sources because they will not need to separately quantify the materials used on narrow-web flexographic presses or proof presses in order to exclude them from the compliance demonstration as is necessary when narrow-web flexographic presses and proof presses are not part of the product and packaging rotogravure or wide-web flexographic printing affected source.

We have corrected 40 CFR 63.821(a)(2)(ii)(A) to state that the total mass of materials applied by the press using product and packaging rotogravure "print" stations be included in the numerator. The final rule incorrectly referred to product and packaging rotogravure "work" stations in the numerator.

We have added a new 40 CFR 63.821(a)(6) to clarify that certain operations affiliated with product and packaging rotogravure or wide-web flexographic printing affected sources are part of the printing and publishing industry source category, but are not part of the product and packaging rotogravure or wide-web flexographic printing affected source. These affiliated operations include mixing or dissolving of ink or coating ingredients prior to application; ink or coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of ink or coating lines and line parts; handling and storage of inks, coatings and solvents; and conveyance and treatment of wastewater. Including these affiliated operations in the printing and publishing source category is consistent with 40 CFR 63.7985(d)(2) of the Miscellaneous Coating Manufacturing NESHAP (40 CFR part 63, subpart HHHHH) which exempts these affiliated operations from coverage under that rule. They were excluded from the product and packaging rotogravure or wide-web flexographic printing affected source in the final rule because they were not within the scope of the data collected and used to establish the floor and the maximum achievable control technology (MACT) standard for these affected sources.

These affiliated operations continue to be part of publication rotogravure affected sources as described in 40 CFR 63.821(a)(1). The material balance records kept for the solvent recovery systems used by all publication rotogravure facilities were broader in scope and included these affiliated operations. As a result, they form part of the basis for the floor and the MACT standard for publication rotogravure affected sources.

We have added a new 40 CFR 63.821(a)(7) to clarify that certain lithographic presses, letterpress presses, or screen printing presses, referred to in this new paragraph as "other presses," are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source unless the owner or operator chooses to include them in the affected source as stand-alone equipment as provided in 40 CFR 63.821(a)(3). A definition of the term "other presses" has been added to the rule.

Rotogravure, flexography, lithography, letterpress, and screen printing were all part of the printing and publishing source category in the "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" published on July 16, 1992 (57 FR 31576). The source category was described in detail in "Documentation for Developing the Initial Source Category List" (EPA–450/3–91–030, July 1992). The publication rotogravure affected source in the final rule addresses the publication rotogravure printing process. The product and packaging rotogravure or wide-web flexographic printing affected source in the final rule addresses the product and packaging rotogravure and wide-web flexographic printing processes. Lithography, letterpress, and screen printing are different printing processes than publication rotogravure, product and packaging rotogravure, and flexographic printing. Lithographic, letterpress, and screen printing presses that did not also meet the definition of rotogravure press or wide-web flexographic press (*i.e.*, that had no rotogravure print stations and no wide-web flexographic print stations), therefore, were not part of the publication rotogravure affected source, or the product and packaging rotogravure or wide-web flexographic printing affected source in the final rule.

We have added a new 40 CFR 63.821(a)(8) to clarify that narrow-web flexographic presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source unless the owner or operator chooses to include them in the product and packaging rotogravure or wide-web flexographic printing affected source as provided in 40 CFR 63.821(a)(3) through (5). The rule did not previously treat narrow-web flexographic presses as part of either of these affected sources. We are providing the option of including them in the product and packaging rotogravure or wide-web flexographic printing affected source because this may simplify the compliance

demonstration for some affected sources that previously had to separately quantify the materials used on these presses in order to exclude them from the compliance demonstration.

We have added the word "affected" to 40 CFR 63.821(b)(1) and (2) to clarify that these paragraphs apply to "affected sources."

C. Definitions

We have added, removed, and revised a number of definitions in the rule. These changes add clarity and consistency to the rule.

We added a definition of "coating" to clarify that in addition to solvent-borne coatings and waterborne coatings, materials with 100 percent or near 100 percent solids such as wax coatings, wax laminations, extrusion coatings, ultra-violet cured coatings, etc., are coatings. Materials used to form unsupported substrates such as calendaring of vinyl, blown film, cast film, etc., are not coatings.

We added a definition of "flexible packaging." This term is used in the revised definition of "printing operation."

We added a definition of "narrow-web flexographic press" to complement the already existing definition of "wide-web flexographic press."

We added a definition of "other press" to complement the use of that term in 40 CFR 63.821(a)(7).

We added a definition of "publication rotogravure press" to complement the definition of "rotogravure press." This definition clarifies that a publication rotogravure press may include one or more flexographic imprinters and that a publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

We added a definition of "stand-alone equipment" and removed the definition of "stand-alone coating equipment." This change provides the owner or operator with additional flexibility for bringing additional equipment into the product and packaging rotogravure or wide-web flexographic printing affected source. We also removed the definitions of "coating operation" and "coating station." Since these two terms were used only in the definition of stand-alone coating equipment and they are not used in the definition of stand-alone equipment, these two definitions are no longer needed.

We revised the definition of "certified product data sheet" (CPDS) to refer to 40 CFR 63.827(b) rather than to Method 311 or 40 CFR 63.827(b) since Method 311 is discussed in 40 CFR 63.827(b). We included volatile matter weight fraction along with solids weight fraction in the reference to 40 CFR 63.827(c) since both of these attributes are addressed in 40 CFR 63.827(c). We also explained how a material safety data sheet may serve as a CPDS.

We revised the definition of "control device efficiency" to refer to organic HAP emissions rather than to HAP emissions. The word "organic" was inadvertently omitted from the original definition.

We revised the definitions of "flexographic press" and "rotogravure press" to clarify that the unwind or feed section may contain more than one unwind or feed station. For example, a press that prints on paper and then laminates plastic film to the paper will have an unwind or feed station for the paper, and an unwind or feed station for the plastic that is being laminated to the paper. Both are included in the unwind or feed section.

We revised the definition of "flexographic print station" to clarify the meaning of the term and to distinguish it from certain operations which take place on "other presses."

We revised the definition of "printing operation" to include fabric or other textiles for use in flexible packaging, and to exclude wood furniture components and wood building products. Fabric is printed by roller (intaglio), rotary screen, ink jet, and other printing techniques. Rotogravure and flexographic printing are not traditional fabric printing techniques because the materials used are too fluid. Today, there is some rotogravure or flexographic printing of non-woven substrates, which may meet the definition of "fabric" or "textile" in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO). This includes rotogravure or flexographic printing of fabric or other textiles for use in flexible packaging which is most appropriately covered by the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK). Therefore, we are including rotogravure or flexographic printing of fabric or other textiles for use in flexible packaging in the definition of "printing operation" in the Printing and Publishing Industry NESHAP.

Consistent with this change, we have also amended 40 CFR 63.4281 of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO) by adding a new paragraph (d)(4) which states that equipment used to coat or print on fabric or other textiles for use in flexible packaging that is included in an affected source under the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK) is not part of an affected source under the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP.

There is some rotogravure printing of wood furniture components and wood building products. These wood printing operations are covered by the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) or the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ). Therefore, we are excluding them from the definition of "printing operation" in the Printing and Publishing Industry NESHAP (40 CFR part 63, subpart KK).

We revised the definition of "proof press" by broadening it to include checking the quality of substrates, inks, or other solids-containing materials. Proof presses sometimes serve these other purposes, for example, at a paper mill or ink manufacturing facility.

We corrected the definition of "rotogravure print station" to use the term "print station" rather than the term "work station" in the body of the definition and revised this definition to clarify that other types of materials that may not be referred to by the supplier or by the user as inks can be applied by rotogravure print stations. The term "ink" in the definition in the final rule was intended to include any solids containing material since materials that might be characterized by the supplier or by the user as inks, coatings, or adhesives are applied on rotogravure print stations.

We revised the definition of "work station" to clarify that work stations are present on equipment other than rotogravure or wide-web flexographic presses. For example, work stations are present on proof presses and stand-alone equipment.

The symbol H was used in two different ways in the final rule. To resolve this inconsistency, we revised the definition of the symbol H and changed the symbol used in equation 8 from H to H_{app}. The symbol H is now defined to mean the monthly organic HAP emitted in kilograms. The symbol H_{app} is defined to mean the total monthly organic HAP applied in kilograms. Since the symbol H_{app} is only used in equation 8, we have placed the definition of H_{app} immediately after that equation.

The symbols C_i and MW_i were used only in equation 20 in the final rule. The definitions of these symbols were inconsistent with the manner in which the results of Methods 25 and 25A are expressed. The definitions referred to individual organic compounds. The results of Methods 25 and 25A, however, are expressed as carbon. We

have added a new symbol C_c for use in equation 20. The definition of C_c is consistent with the manner in which the results of Methods 25 and 25A are expressed. Since C_c is used only in equation 20, we have placed the definition of C_c immediately after that equation. The symbols MW_i and C_i are not needed and have been removed. The symbols M_f and Q_{sd} are used only in equation 20. We have moved the definitions of these symbols to immediately after that equation.

D. Standards: Publication Rotogravure Printing

We revised 40 CFR 63.824(b)(1)(i)(A) and (b)(3)(i) by inserting a comma between "varnish" and "adhesive" to clarify that these are two different types of materials.

We revised 40 CFR 63.824(b)(1)(ii)(A) and (b)(2)(ii) to clarify the continuous emission monitoring requirements for solvent recovery devices and oxidizers. For solvent recovery devices, a single continuous volumetric gas flow measurement should be sufficient since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. For oxidizers, separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required.

E. Standards: Product and Packaging Rotogravure and Wide-Web Flexographic Printing

We corrected the first sentence of 40 CFR 63.825(b) introductory text to refer to "organic HAP emissions" rather than to "emissions."

We revised 40 CFR 63.825(b)(6) to use the symbol H_{app} instead of H because the symbol H is used with a different meaning elsewhere in the final rule. We defined H_{app} in 40 CFR 63.825(b)(6) in the same way in which H was previously used in this paragraph of the final rule.

We revised 40 CFR 63.825(c)(2)(iii) and (d)(2) to clarify the continuous emission monitoring requirements for solvent recovery devices and oxidizers. For solvent recovery devices, a single continuous volumetric gas flow measurement should be sufficient since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. For oxidizers, separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required.

We revised 40 CFR 63.825(d)(1)(iv) to refer to a common oxidizer rather than a common solvent recovery system because 40 CFR 63.825(d) describes compliance demonstration requirements for oxidizers.

F. Performance Test Methods

We revised 40 CFR 63.827(a)(1)(i) and (ii) to clarify that there must be continuous emission monitors for both total organic volatile matter concentration and volumetric gas flow rate, and that the continuous emission monitoring must be done in accordance with the requirements of this subpart. Both concentration and flow data are needed to calculate the total organic volatile matter mass flow.

In 40 CFR 63.827(b) of the final rule, the provisions for using manufacturers formulation data for determining organic HAP content required the inclusion of all HAP present at a level greater than 0.1 weight percent in any raw material used. This requirement was based on indications from ink and coating manufacturers that they were already receiving this level of information from their raw material suppliers. A trade association representing certain raw material suppliers submitted information showing that ink and coating manufacturers are not receiving this level of information from their suppliers. Rather, they are receiving information consistent with the requirements of the Occupational Safety and Health Administration (OSHA) hazard communication standards which require the identification of hazardous constituents present at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other hazardous constituents. We revised 40 CFR 63.827(b) to make it consistent with the OSHA hazard communication standards, included some examples, and clarified that test data and formulation data can be provided by suppliers or independent third parties.

We revised 40 CFR 63.827(c) by including some examples, specifying how to calculate weight solids fraction from volatile matter weight fraction, and clarifying that test data and formulation data can be provided by suppliers or independent third parties.

We revised 40 CFR 63.827(d)(1)(vi) to clarify that the same method must be used to determine inlet and outlet organic volatile matter concentration, and that the 50 parts per million by volume levels for Method 25A are expressed on an as carbon basis.

We revised 40 CFR 63.827(d)(1)(viii) to clarify that the results of Methods 25 and 25A are expressed on an as carbon basis and to define the symbols used in equation 20 immediately after that equation.

In 40 CFR 63.827(e)(1) and (2) the final rule referred to the capture efficiency procedures in appendix B to 40 CFR 52.741 and 40 CFR 52.741(a)(4)(iii)(B). We revised 40 CFR 63.827(e)(1) and (2) to refer to Methods 204 and 204A through F of 40 CFR part 51, appendix M. These methods did not exist when the final rule was published on May 30, 1996. They are updated versions of the procedures specified in the final rule.

G. Monitoring Requirements

We revised 40 CFR 63.828(a)(3) to clarify that there must be continuous emission monitors for both total organic volatile matter concentration and volumetric gas flow rate. Both concentration and flow data are needed to calculate the total organic volatile matter mass flow.

H. Recordkeeping Requirements

We corrected 40 CFR 63.829(e)(1) and (2) to state that records must be kept of the total mass, as opposed to volume, of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month. This is consistent with 40 CFR 63.821(b)(2) and 40 CFR 63.827(b)(2) which require these measurements to be done on a mass basis.

I. Reporting Requirements

We revised 40 CFR 63.830(b)(6) to clarify that summary reports are required even if the affected source does not have any control devices or does not take the performance of any control devices into account in demonstrating compliance with the emission limitations in 40 CFR 63.824 or 40 CFR 63.825. As stated in 40 CFR 63.830(b)(6)(i) through (iv), these summary reports must include information about various types of exceedances. These types of exceedances can occur at sources with or without control devices.

J. Appendix A to 40 CFR Part 63, Subpart KK

We revised appendix A to subpart KK to make several clarifications. In paragraph 3.2 of appendix A we have clarified that the confidence intervals are two-sided, changed the designation of the table to Table A–1, changed the table references to Table A–1, and corrected the table entry for 11 valid test runs. In paragraph 4.8 of appendix A we have changed the table reference to Table A–1.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether this regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action adds clarifications and corrections to the final standards. However, OMB has previously approved the information collection requirements contained in the existing regulations (69 FR 3912, January 27, 2004) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0335 (EPA ICR No. 1739.04). A copy of the Information Collection Request (ICR) may be obtained from Ms. Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You also may download a copy from the internet at *http://www.epa.gov/icr*. Include the ICR number in any correspondence.

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

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

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 1,000 as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We conducted an assessment of the impact of the May 30, 1996 final rule on small businesses within the industries affected by that rule. This analysis allowed us to conclude that there would not be a significant economic impact on a substantial number of small entities from the implementation of that rule. There is nothing contained in the direct final rule amendments that will impose an economic impact on small businesses in any way not considered in the analysis of the May 30, 1996 final rule; this means that the direct final rule amendments have no incremental economic impact on small businesses beyond what was already examined in the final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The direct final rule amendments apply to affected sources in the printing and publishing industry and clarify and correct errors in the final rule and, therefore, add no additional burden on sources. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10,

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

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No printing and publishing facilities subject to the direct final rule amendments are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

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

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

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

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

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

These amendments add references to EPA Methods 204 and 204A through F of 40 CFR part 51, appendix M for determining capture efficiency. These methods replace the capture efficiency procedures of appendix B to 40 CFR 52.741 and 40 CFR 52.741(a)(4)(iii)(B). EPA Methods 204 and 204A through F are updated versions of the previously used procedures.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 204 and 204A–F. The search and review results have been documented and are placed in the docket for the amendments.

EPA test methods included in the rule are specified in 40 CFR 63.827. Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on August 22, 2006.

List of Subjects in 40 CFR Part 63

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

Dated: May 18, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart KK—[Amended]

■ 2. Section 63.820 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 63.820 Applicability.

(a) * * *

(2) Each new and existing facility at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated for which the owner or operator chooses to commit to and meets the criteria of paragraphs (a)(2)(i) and (ii) of this section for purposes of establishing the facility to be an area source of HAP with respect to this subpart. A facility which establishes area source status through some other mechanism, as described in paragraph (a)(7) of this section, is not subject to the provisions of this subpart.

* * * * *

■ 3. Section 63.821 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(ii)(A), and (a)(3).

■ b. Adding paragraphs (a)(4) through (a)(8).

■ c. Revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 63.821 Designation of Affected Sources.

(a) * * *

(1) All of the publication rotogravure presses and all related equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment at a facility.

(2) All of the product and packaging rotogravure or wide-web flexographic printing presses at a facility plus any other equipment at that facility which the owner or operator chooses to include in accordance with paragraphs (a)(3) or (a)(4) of this section, except

(i) Proof presses, unless the owner or operator chooses to include proof presses in the affected source in accordance with paragraph (a)(5) of this section.

(ii) * * *

(A) the sum of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using product and packaging rotogravure print stations and the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using wide-web flexographic print stations in each month never exceeds 5 percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press in that month, including all inboard and outboard stations; and

* * * * *

(3) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source stand-alone equipment subject to the following provisions:

(i) Stand-alone equipment meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The stand-alone equipment and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids-containing materials to the same web or substrate; or

(B) The stand-alone equipment and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(C) A common control device is used to control organic HAP emissions from the stand-alone equipment and from one or more product and packaging rotogravure or wide-web flexographic printing presses;

(ii) All eligible stand-alone equipment located at the facility is included in the affected source; and

(iii) No product and packaging rotogravure or wide-web flexographic presses are excluded from the affected source under the provisions of paragraph (a)(2)(ii) of this section.

(4) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source narrow-web flexographic presses subject to the following provisions:

(i) Each narrow-web flexographic press meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The narrow-web flexographic press and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids containing material to the same web or substrate; or

(B) The narrow-web flexographic press and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(C) A common control device is used to control organic HAP emissions from the narrow-web flexographic press and from one or more product and packaging rotogravure or wide-web flexographic presses; and

(ii) All eligible narrow-web flexographic presses located at the facility are included in the affected source.

(5) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source rotogravure proof presses or flexographic proof presses subject to the following provisions:

(i) Each proof press meeting any of the criteria specified in this subparagraph is eligible for inclusion.

(A) The proof press and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material; or

(B) A common control device is used to control organic HAP emissions from the proof press and from one or more product and packaging rotogravure or wide-web flexographic presses; and

(ii) All eligible proof presses located at the facility are included in the affected source.

(6) Affiliated operations such as mixing or dissolving of ink or coating ingredients prior to application; ink or coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of ink or coating lines and line parts; handling and storage of inks, coatings, and solvents; and conveyance and treatment of wastewater are part of the printing and publishing industry source category, but are not part of the product and packaging rotogravure or wide-web flexographic printing affected source.

(7) Other presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source and are, therefore, exempt from the requirements of this subpart except as provided in paragraph (a)(3) of this section.

(8) Narrow web-flexographic presses are part of the printing and publishing industry source category, but are not part of the publication rotogravure affected source or the product and packaging rotogravure or wide-web flexographic printing affected source and are, therefore, exempt from the requirements of this subpart except as provided in paragraphs (a)(3) through (5) of this section.

(b) * * *

(1) The owner or operator of the affected source applies no more than 500 kilograms (kg) per month, for every month, of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials on product and packaging rotogravure or wide-web flexographic printing presses, or

(2) The owner or operator of the affected source applies no more than

400 kg per month, for every month, of organic HAP on product and packaging rotogravure or wide-web flexographic printing presses.

* * * * *

■ 4. Section 63.822 is amended by:
■ a. Adding in alphabetical order in paragraph (a) definitions for "coating," "flexible packaging," "narrow-web flexographic press," "other press," "publication rotogravure press," and "stand-alone equipment."
■ b. Removing the definitions of "coating operation," "coating station," and "stand-alone coating equipment" from paragraph (a).
■ c. Revising the definitions in paragraph (a) of "certified product data sheet (CPDS)," "control device efficiency," "flexographic press," "flexographic print station," "printing operation," "proof press," "rotogravure press," "rotogravure print station," and "work station."
■ d. Revising paragraph (b)(12).
■ e. Removing and reserving paragraphs (b)(6), (b)(22), (b)(32), and (b)(36) to read as follows:

§ 63.822 Definitions.

(a) * * *

* * * * *

Certified product data sheet (CPDS) means documentation furnished by suppliers of inks, coatings, varnishes, adhesives, primers, solvents, and other materials or by an independent third party that provides the organic HAP weight fraction of these materials determined in accordance with § 63.827(b), or the volatile matter weight fraction or solids weight fraction determined in accordance with § 63.827(c). A material safety data sheet (MSDS) may serve as a CPDS provided the MSDS meets the data requirements of § 63.827(b) and (c). The purpose of the CPDS is to assist the owner or operator in demonstrating compliance with the emission limitations presented in §§ 63.824–63.825.

Coating means material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, solvent-borne coatings, waterborne coatings, wax coatings, wax laminations, extrusion coatings, extrusion laminations, 100 percent solid adhesives, ultra-violet cured coatings, electron beam cured coatings, hot melt coatings, and cold seal coatings. Materials used to form unsupported substrates such as calendaring of vinyl, blown film, cast film, extruded film, and coextruded film are not considered coatings.

* * * * *

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total organic HAP emissions that are introduced into the control device, expressed as a percentage.

* * * * *

Flexible packaging means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, labels, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

Flexographic press means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection section. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

Flexographic print station means a print station on which a flexographic printing operation is conducted. A flexographic print station includes an anilox roller that transfers material to a raised image (type or art) on a plate cylinder. The material is then transferred from the image on the plate cylinder to the web or sheet to be printed. A flexographic print station may include a fountain roller to transfer material from the reservoir to the anilox roller, or material may be transferred directly from the reservoir to the anilox roller. The materials applied are of a fluid, rather than paste, consistency.

* * * * *

Narrow-web flexographic press means a flexographic press that is not capable of printing substrates greater than 18 inches in width and that does not also meet the definition of rotogravure press (i.e., it has no rotogravure print stations).

* * * * *

Other press means a lithographic press, letterpress press, or screen printing press that does not meet the definition of rotogravure press or flexographic press (i.e., it has no rotogravure print stations and no flexographic print stations), and that does not print on fabric or other textiles as defined in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR part 63, subpart OOOO), wood furniture components as defined in the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) or wood building products as defined in the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ).

* * * * *

Printing operation means the formation of words, designs, or pictures on a substrate other than wood furniture components as defined in the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ), wood building products as defined in the Surface Coating of Wood Building Products NESHAP (40 CFR part 63, subpart QQQQ), and fabric or other textiles as defined in the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP (40 CFR part 63, subpart OOOO), except for fabric or other textiles for use in flexible packaging.

* * * * *

Proof press means any press which prints only non-saleable items used to check the quality of image formation of rotogravure cylinders or flexographic plates; substrates such as paper, plastic film, metal foil, or vinyl; or ink, coating varnish, adhesive, primer, or other solids-containing material.

* * * * *

Publication rotogravure press means a rotogravure press used for publication rotogravure printing. A publication rotogravure press may include one or more flexographic imprinters. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

* * * * *

Rotogravure press means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations, including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

Rotogravure print station means a print station on which a rotogravure printing operation is conducted. A

rotogravure print station includes a rotogravure cylinder and supply for ink or other solids containing material. The image (type and art) to be printed is etched or engraved below the surface of the rotogravure cylinder. On a rotogravure cylinder the printing image consists of millions of minute cells.

* * * * *

Stand-alone equipment means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator); a series of one or more work stations and any associated dryers; and a rewind, stack, or collection section that is not part of a product and packaging rotogravure or wide-web flexographic press. Stand-alone equipment is sometimes referred to as "off-line" equipment.

* * * * *

Work station means a unit on which material is deposited onto a substrate.

(b) * * *

(6) [Reserved]

* * * * *

(12) H = the monthly organic HAP emitted, kg.

* * * * *

(22) [Reserved]

* * * * *

(32) [Reserved]

* * * * *

(36) [Reserved]

* * * * *

■ 5. Section 63.824 is amended by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(ii), and (b)(3)(i) to read as follows:

§ 63.824 Standards: Publication rotogravure printing.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material used by the affected source during the month.

* * * * *

(ii) * * *

(A) Install continuous emission monitors to collect the data necessary to calculate the total organic volatile matter mass flow in the gas stream entering and the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for each month such that the percent control efficiency (E) of the solvent recovery device can be calculated for the month. This requires continuous emission monitoring of the total organic volatile matter concentration in the gas stream entering the solvent recovery device, the total organic volatile matter concentration in the gas stream exiting the solvent recovery device, and the volumetric gas flow rate through the solvent recovery device. A single continuous volumetric gas flow measurement should be sufficient for a solvent recovery device since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. Each month's individual inlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream entering the solvent recovery device for the month. Each month's individual outlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for the month.

* * * * *

(2) * * *

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. The percent control efficiency of the oxidizer shall be demonstrated in accordance with the requirements of paragraph (b)(1)(ii) of this section except that separate continuous measurements of the inlet volumetric gas flow rate and the outlet volumetric gas flow rate are required for an oxidizer.

(3) * * *

(i) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material used in the affected source during the month.

* * * * *

■ 6. Section 63.825 is amended by:

■ a. Revising the first sentence of paragraph (b) introductory text.

■ b. Revising paragraph (b)(6).

■ c. Revising paragraph (c)(2)(iii).

■ d. Revising paragraph (d)(1)(iv).

■ e. Revising paragraph (d)(2) to read as follows:

§ 63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.

* * * * *

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source shall limit organic HAP emissions to no more than 5 percent of the organic HAP applied for the month; or to no more than 4 percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month; or to no more than 20 percent of the mass of solids applied for the month; or to a calculated equivalent allowable mass based on the organic HAP and solids contents of the inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month. * * *

* * * * *

(6) Demonstrate that the total monthly organic HAP applied, H_{app}, as determined by Equation 8, is less than the calculated equivalent allowable organic HAP, H_a, as determined by paragraph (e) of this section.

$$H_{app} = \sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj} \qquad \text{Eq. 8}$$

Where:

H_{app} = Total monthly organic HAP applied, kg.

* * * * *

(c) * * *

(2) * * *

(iii) Install continuous emission monitors to collect the data necessary to calculate the total organic volatile matter mass flow in the gas stream entering and the total organic volatile mass flow in the gas stream exiting the solvent recovery device for each month such that the percent control efficiency (E) of the solvent recovery device can be calculated for the month. This requires continuous emission monitoring of the total organic volatile matter concentration in the gas stream entering the solvent recovery device, the total organic volatile matter concentration in the gas stream exiting the solvent recovery device, and the volumetric gas flow rate through the solvent recovery device. A single continuous volumetric gas flow measurement should be sufficient for a solvent recovery device since the inlet and outlet volumetric gas flow rates for a solvent recovery device are essentially equal. Each month's individual inlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream entering the solvent recovery device for the month. Each month's individual outlet concentration values and corresponding individual gas flow rate values are multiplied and then summed to get the total organic volatile matter mass flow in the gas stream exiting the solvent recovery device for the month.

* * * * *

(d) * * *

(1) * * *

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials

applied, or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common control device during the month.

* * * * *

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. The percent control efficiency of the oxidizer shall be demonstrated in accordance with the requirements of paragraph (c)(2) of this section except that separate continuous volumetric gas flow measurements of the inlet and outlet volumetric gas flow rates are required for an oxidizer.

* * * * *

■ 7. Section 63.827 is amended by:
■ a. Revising paragraphs (a)(1)(i) and (a)(1)(ii).
■ b. Revising paragraph (b).
■ c. Revising paragraph (c).
■ d. Revising paragraphs (d)(1)(vi) and (d)(1)(viii).
■ e. Revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 63.827 Performance Test Methods.

(a) * * *

(1) * * *

(i) It is equipped with continuous emission monitors for determining total organic volatile matter concentration and the volumetric gas flow rate, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall organic HAP control efficiency can be calculated, and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.824(b)(1)(ii), § 63.825(b)(2)(ii), § 63.825(c)(2), or § 63.825(d)(2), as applicable, and § 63.828, or

* * * * *

(b) Determination of the weight fraction organic HAP of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials used by a publication rotogravure affected source shall be conducted according to paragraph (b)(1) of this section. Determination of the weight fraction organic HAP of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials applied by a product and packaging rotogravure or wide-web flexographic printing affected source shall be conducted according to paragraph (b)(2) of this section. If the weight fraction organic HAP values are not determined using the procedures in paragraphs (b)(1) or (b)(2) of this section, the owner or operator must submit an alternative test method for determining their values for approval by the Administrator in accordance with § 63.7(f). The recovery efficiency of the test method must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(1) Each owner or operator of a publication rotogravure affected source shall determine the weight fraction organic HAP of each ink, coating, varnish, adhesive, primer, solvent, and other material used by following one of the procedures in paragraphs (b)(1)(i) through (iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The organic HAP content determined by Method 311 must be calculated according to the criteria and procedures in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) Include each organic HAP determined to be present at greater than or equal to 0.1 weight percent for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds.

(B) Express the weight fraction of each organic HAP included according to paragraph (b)(1)(i)(A) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(C) Calculate the total weight fraction of organic HAP in the tested material by summing the weight fraction of each organic HAP included according to paragraph (b)(1)(i)(A) of this section and truncating the result to three places after the decimal point (for example, 0.763).

(ii) The owner or operator may determine the weight fraction volatile matter of the material in accordance with § 63.827(c)(1) and use this value for the weight fraction organic HAP for all compliance purposes.

(iii) The owner or operator may use formulation data to determine the weight fraction organic HAP of a material. Formulation data may be provided to the owner or operator on a CPDS by the supplier of the material or an independent third party. Formulation data may be used provided that the weight fraction organic HAP is calculated according to the criteria and procedures in paragraphs (b)(1)(iii)(A) through (D) of this section. In the event of an inconsistency between the formulation data and the result of Method 311 of appendix A of this part, where the test result is higher, the Method 311 data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(A) For each raw material used in making the material, include each organic HAP present in that raw material at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds. The weight fraction of each such organic HAP in each raw material must be determined by Method 311 of appendix A of this part, by an alternate method approved by the Administrator, or from a CPDS provided by the raw material supplier or an independent third party. The weight fraction of each such organic HAP in each raw material must be expressed as a value truncated to four places after the decimal point (for example, 0.1291).

(B) For each raw material used in making the material, the weight fraction contribution of each organic HAP, which is included according to paragraph (b)(1)(iii)(A) of this section, in that raw material to the weight fraction organic HAP of the material is calculated by multiplying the weight fraction, truncated to four places after the decimal point (for example, 0.1291), of that organic HAP in that raw material times the weight fraction of that raw material, truncated to four places after the decimal point (for example, 0.2246), in the material. The product of each such multiplication is to be truncated to four places after the decimal point (for example, 0.1291 times 0.2246 yields 0.02899586 which truncates to 0.0289).

(C) For each organic HAP which is included according to paragraph (b)(1)(iii)(A) of this section, the total weight fraction of that organic HAP in the material is calculated by adding the weight fraction contribution of that organic HAP from each raw material in which that organic HAP is included according to paragraph (b)(1)(iii)(A) of this section. The sum of each such addition must be expressed to four places after the decimal point.

(D) The total weight fraction of organic HAP in the material is the sum of the counted individual organic HAP weight fractions. This sum must be truncated to three places after the decimal point (for example, 0.763).

(2) Each owner or operator of a product and packaging rotogravure or

wide-web flexographic printing affected source shall determine the organic HAP weight fraction of each ink, coating, varnish, adhesive, primer, solvent, and other material applied by following one of the procedures in paragraphs (b)(2)(i) through (iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The organic HAP content determined by Method 311 must be calculated according to the criteria and procedures in paragraphs (b)(2)(i)(A) through (C) of this section.

(A) Include each organic HAP determined to be present at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds.

(B) Express the weight fraction of each organic HAP included according to paragraph (b)(2)(i)(A) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(C) Calculate the total weight fraction of organic HAP in the tested material by summing the weight fraction of each organic HAP included according to paragraph (b)(2)(i)(A) of this section and truncating the result to three places after the decimal point (for example, 0.763).

(ii) The owner or operator may determine the weight fraction volatile matter of the material in accordance with § 63.827(c)(2) and use this value for the weight fraction organic HAP for all compliance purposes.

(iii) The owner or operator may use formulation data to determine the weight fraction organic HAP of a material. Formulation data may be provided to the owner or operator on a CPDS by the supplier of the material or an independent third party. Formulation data may be used provided that the weight fraction organic HAP is calculated according to the criteria and procedures in paragraphs (b)(2)(iii)(A) through (D) of this section. In the event of an inconsistency between the formulation data and the result of Method 311 of appendix A of this part, where the test result is higher, the Method 311 data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(A) For each raw material used in making the material, include each organic HAP present in that raw material at greater than or equal to 0.1 weight percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds. The weight fraction of each such organic HAP in each raw material must be determined by Method 311 of appendix A of this part, by an alternate method approved by the Administrator, or from a CPDS provided by the raw material supplier or an independent third party. The weight fraction of each such organic HAP in each raw material must be expressed as a value truncated to four places after the decimal point (for example, 0.1291).

(B) For each raw material used in making the material, the weight fraction contribution of each organic HAP, which is included according to paragraph (b)(2)(iii)(A) of this section, in that raw material to the weight fraction organic HAP of the material is calculated by multiplying the weight fraction, truncated to four places after the decimal point (for example, 0.1291), of that organic HAP in that raw material times the weight fraction of that raw material, truncated to four places after the decimal point (for example, 0.2246), in the material. The product of each such multiplication is truncated to four places after the decimal point (for example, 0.1291 times 0.2246 yields 0.02899586 which truncates to 0.0289).

(C) For each organic HAP which is included according to paragraph (b)(2)(iii)(A) of this section, the total weight fraction of that organic HAP in the material is calculated by adding the weight fraction contribution of that organic HAP from each raw material in which that organic HAP is included according to paragraph (b)(2)(iii)(A) of this section. The sum of each such addition must be expressed to four places after the decimal point.

(D) The total weight fraction of organic HAP in the material is the sum of the counted individual organic HAP weight fractions. This sum is to be truncated to three places after the decimal point (for example, 0.763).

(c) Determination of the weight fraction volatile matter content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials used by a publication rotogravure affected source shall be conducted according to paragraph (c)(1) of this section. Determination of the weight fraction volatile matter content and weight fraction solids content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials applied by a product and packaging rotogravure or wide-web flexographic printing affected source shall be conducted according to paragraph (c)(2) of this section.

(1) Each owner or operator of a publication rotogravure affected source shall determine the volatile matter weight fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material used by following the procedures in paragraph (b)(1)(i) of this section, or by using formulation data as described in paragraph (c)(3) of this section.

(i) Determine the volatile matter weight fraction of the material using Method 24A of 40 CFR part 60, appendix A. The Method 24A determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The Method 24A result shall be truncated to three places after the decimal point (for example, 0.763). If these values cannot be determined using Method 24A, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing affected source shall determine the volatile matter weight fraction and solids weight fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material applied by following the procedures in paragraphs (b)(2)(i) and (ii) of this section, or by using formulation data as described in paragraph (c)(3) of this section.

(i) Determine the volatile matter weight fraction of the material using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the owner or operator of the affected source, the supplier of the material, or an independent third party. The Method 24 result shall be truncated to three places after the decimal point (for example, 0.763). If these values cannot be determined using Method 24, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator.

(ii) Calculate the solids weight fraction Method 24 result by subtracting the volatile matter weight fraction Method 24 result from 1.000. This calculation may be performed by the owner or operator, the supplier of the material, or an independent third party.

(3) The owner or operator may use formulation data to determine the volatile matter weight fraction or solids weight fraction of a material. Formulation data may be provided to

the owner or operator on a CPDS by the supplier of the material or an independent third party. The volatile matter weight fraction and solids weight fraction shall be truncated to three places after the decimal point (for example, 0.763). In the event of any inconsistency between the formulation data and the result of Method 24 or Method 24A of 40 CFR part 60, appendix A, where the test result for volatile matter weight fraction is higher or the test result for solids weight fraction is lower, the applicable test method data will take precedence unless, after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(d) * * *

(1) * * *

(vi) Method 25 of 40 CFR part 60, appendix A, shall be used to determine organic volatile matter concentration, except as provided in paragraphs (d)(1)(vi)(A) through (D) of this section. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with notice of the performance test required under § 63.7(c). The same method must be used for both the inlet and outlet measurements. The owner or operator may use Method 25A of 40 CFR part 60, appendix A, if (A) An exhaust gas organic volatile matter concentration of 50 parts per million by volume (ppmv) or less as carbon is required to comply with the standards of §§ 63.824–63.825, or

(B) The organic volatile matter concentration at the inlet to the control system and the required level of control are such to result in exhaust gas organic volatile matter concentrations of 50 ppmv or less as carbon, or

(C) Because of the high efficiency of the control device, the anticipated organic volatile matter concentration at the control device exhaust is 50 ppmv or less as carbon, regardless of inlet concentration, or

(D) The control device is not an oxidizer.

* * * * *

(viii) Organic volatile matter mass flow rates shall be determined using Equation 20:

$$M_f = Q_{sd} C_c [12.0] [0.0416] [10^{-6}] \qquad \text{Eq. 20}$$

Where:

M_f = Total organic volatile matter mass flow rate, kg/hour (h).

Q_{sd} = Volumetric flow rate of gases entering or exiting the control device, as determined according to § 63.827(d)(1)(ii), dry standard cubic meters (dscm)/h.

C_c = Concentration of organic compounds as carbon, ppmv.

12.0 = Molecular weight of carbon.

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

* * * * *

(e) * * *

(1) You may assume your capture efficiency equals 100 percent if your capture system is a permanent total enclosure (PTE). You must confirm that your capture system is a PTE by demonstrating that it meets the requirements of section 6 of Method 204 of 40 CFR part 51, appendix M, and that all exhaust gases from the enclosure are delivered to a control device.

(2) You may determine capture efficiency according to the protocols for testing with temporary total enclosures that are specified in Methods 204 and 204A through F of 40 CFR part 51, appendix M. You may exclude never controlled work stations from such capture efficiency determinations.

* * * * *

■ 8. Section 63.828 is amended by revising paragraph (a)(3) to read as follows:

§ 63.828 Monitoring Requirements.

(a) * * *

(3) An owner or operator complying with §§ 63.824–63.825 through continuous emission monitoring of a control device shall install, calibrate, operate, and maintain continuous emission monitors to measure total organic volatile matter concentration and volumetric gas flow rate in accordance with § 63.824(b)(1)(ii), § 63.825(b)(2)(ii), § 63.825(c)(2), or § 63.825(d)(2), as applicable.

* * * * *

■ 9. Section 63.829 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 63.829 Recordkeeping Requirements.

* * * * *

(e) * * *

(1) For each facility which meets the criteria of § 63.821(b)(1), the owner or operator shall maintain records of the total mass of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(2) For each facility which meets the criteria of § 63.821(b)(2), the owner or operator shall maintain records of the total mass and organic HAP content of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

* * * * *

■ 10. Section 63.830 is amended by revising paragraph (b)(6) introductory text to read as follows:

§ 63.830 Reporting Requirements.

* * * * *

(b) * * *

(6) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every 6-month period). These summary reports are required even if the affected source does not have any control devices or does not take the performance of any control devices into account in demonstrating compliance with the emission limitations in § 63.824 or § 63.825. In addition to a report of operating parameter exceedances as required by § 63.10(e)(3)(i), the summary report shall include, as applicable:

* * * * *

■ 11. Appendix A is amended by revising paragraphs 3.2 and 4.8 to read as follows:

Appendix A to Subpart KK of Part 63—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

* * * * *

3.2 The DQO calculation is made as follows using Equations 1 and 2:

$$P = \left[\frac{a}{x_{avg}}\right] 100 \qquad \text{Eq. 1}$$

$$a = \frac{t_{0.975} S}{\sqrt{n}} \qquad \text{Eq. 2}$$

Where:

a = Distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval for the measured value.

n = Number of valid test runs.
P = DQO indicator statistic, distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval, expressed as a percent of the average measured CE value.
s = Sample standard deviation.
$t_{0.975}$ = t-value at the 95-percent (two-sided) confidence level (see Table A–1).
x_{avg} = Average measured CE value (calculated from all valid test runs).
x_i = The CE value calculated from the ith test run.

TABLE A–1.—t-VALUES

Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$
1 or 2	N/A	N/A
3	4.303	1.886
4	3.182	1.638
5	2.776	1.533
6	2.571	1.476
7	2.447	1.440
8	2.365	1.415
9	2.306	1.397
10	2.262	1.383
11	2.228	1.372
12	2.201	1.363
13	2.179	1.356
14	2.160	1.350
15	2.145	1.345
16	2.131	1.341
17	2.120	1.337
18	2.110	1.333
19	2.101	1.330
20	2.093	1.328
21	2.086	1.325

* * * * *

4.8 The LCL is calculated at an 80 percent (two-sided) confidence level as follows using Equation 11:

$$LC_1 = x_{avg} - \frac{t_{0.90}s}{\sqrt{n}} \qquad \text{Eq. 11}$$

Where:
LC_1 = LCL at an 80-percent (two-sided) confidence level.
n = Number of valid test runs.
s = Sample standard deviation.
$t_{0.90}$ = t-value at the 80-percent (two-sided) confidence level (see Table A–1).
x_{avg} = Average measured CE value (calculated from all valid test runs).
* * * * *

Subpart JJJJ—[Amended]

■ 12. Section 63.3300 is amended by revising paragraph (a) to read as follows:

§ 63.3300 Which of my emission sources are affected by this subpart?

* * * * *

(a) Any web coating line that is stand-alone equipment under subpart KK of this part (National Emission Standards for the Printing and Publishing Industry) which the owner or operator includes in the affected source under subpart KK.

* * * * *

Subpart OOOO—[Amended]

■ 13. Section 63.4281 is amended by:
■ a. Revising paragraph (d) introductory text.
■ b. Adding paragraphs (d)(4) to read as follows:

§ 63.4281 Am I subject to this subpart?

* * . * * *

(d) Web coating lines specified in paragraphs (d)(1) through (4) of this section are not part of the affected source of this subpart.

* * * * *

(4) Any web coating line that coats or prints fabric or other textiles for use in flexible packaging and that is included in an affected source under subpart KK of this part (National Emission Standards for the Printing and Publishing Industry).

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906—AA60

Smallpox Vaccine Injury Compensation Program: Smallpox (Vaccinia) Vaccine Injury Table

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Adoption of interim final rule as final rule with an amendment.

SUMMARY: This document adopts the Smallpox (Vaccinia) Vaccine Injury Table (the Table) Interim Final Rule as the Final Rule with an amendment, as follows: the Final Rule clarifies that, in order for the presumption of causation to apply, the time intervals listed on the Table refer specifically to the period in which the first symptom or manifestation of onset of injury must appear following administration of the smallpox vaccine or exposure to vaccinia, and that the time intervals listed have no relevance to time of diagnosis of the injury.

DATES: The Interim Final Rule, published on August 27, 2003, was effective on that date, and is adopted as the Final Rule with an amendment effective May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, (301) 443–2330.

SUPPLEMENTARY INFORMATION:

Background

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Pub. L. 108–20, 117 Stat. 638, directed the Secretary of Health and Human Services (the Secretary) to establish the Smallpox Vaccine Injury Compensation Program (the Program). Secondary to other payers, the Program provides medical, lost employment income, and death benefits for eligible individuals who sustained covered injuries as a result of receiving smallpox vaccine or other covered countermeasures, or as a result of accidental exposure to vaccinia. Congress appropriated $42 million in fiscal year (FY) 2003 for the administration of, and payment of benefits under, the Program. The Consolidated Appropriations Act of 2005 reduced this appropriation to $22 million. The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–149) further reduced the Program's appropriation by $10 million to a total of $12 million.

Individuals who receive a smallpox vaccination under a Department of Health and Human Services (HHS), State, or local emergency response plan approved by HHS within the period described in the Secretary's Declaration, and who sustain a covered injury may be eligible for benefits under SEPPA. Individuals who contracted vaccinia through contact with such individuals or other eligible vaccinia contacts and who sustain a covered injury may also be eligible for benefits. In the case of death resulting directly from receipt of the smallpox vaccine or exposure to vaccinia by eligible individuals, certain of their survivors may be considered for death benefits. If an eligible individual who sustained a covered injury dies from another cause before payment of benefits has been made under the Program, the estate may qualify for payment of unreimbursed medical expenses incurred and employment income lost as a result of the covered injury, secondary to other payers. SEPPA directed the Secretary to establish a table identifying adverse effects (including injuries, disabilities,

conditions, and deaths) that shall be presumed to result from the administration of, or exposure to, the smallpox vaccine, and the time interval in which the first symptom or manifestation of each listed injury must appear in order for such presumption to apply. An Interim Final Rule for the Table was published in the **Federal Register** on August 27, 2003 (68 FR 51492), with public comments sought on these provisions.

Based on the comments received, this Final Rule clarifies that the Table is not the sole standard for determining medical eligibility for benefits under the Program. Therefore, an individual who sustains an injury that is not on the Table or not within the timeframes on the Table, and believes it was caused by a smallpox vaccination, is encouraged to submit a Request Package to the Program. This Final Rule makes it clear that the time intervals on the Table refer specifically to the first symptom or manifestation of onset of illness or injury, not to the date of the diagnosis. It also clarifies that any component of a smallpox vaccine, not only the vaccinia, could be the possible cause of a covered injury. Further, this regulation updates the Interim Final Rule to reflect that the Secretary has extended the effective period of the Declaration Regarding Administration of Smallpox Countermeasures (the Declaration). Finally, this Final Rule also updates the change in name of the Special Programs Bureau to the Healthcare Systems Bureau; and provides the new address of the Program Office.

Discussion of Comments

The public comment period ended on October 27, 2003. HHS received a total of 11 public comments. Four were from professional associations; three were from medical professionals; two were from the general public; one was from a State health department; and one was from a nonprofit community health organization. The issues raised and HHS's responses appear below.

A. Time Intervals for the First Symptom or Manifestation of Onset of Injury

The Secretary received two comments suggesting that the time intervals listed on the Table be lengthened. One commenter requested that the Secretary extend the time limit for the onset of myocarditis and pericarditis from 21 days to 60 days. The other commenter indicated concern that the time intervals listed on the Table seem potentially short, and should be determined in consultation with the Centers for Disease Control and Prevention (CDC) and the military regarding all the Table time intervals, independent of how long it takes for a scab to fall off. The Secretary received a third comment related to the time intervals on the Table requesting an appeal process to the Table time intervals.

The Secretary does not concur with changing the time intervals on the Table, whether it be for the onset of myocarditis or pericarditis from 21 to 60 days, or any other seemingly short time intervals. The Secretary did consult with the Department of Defense (DoD) and CDC, as well as with other HHS components and the private sector. Their scientific data support the time intervals as specified on the Table. The commenters did not provide evidence to support lengthening the time intervals beyond that which the Secretary had already considered and, therefore, they remain as currently listed. However, as discussed below, if any individual has symptoms that manifest outside of those time intervals, he or she may still be considered for benefits under the Program.

The third commenter expressed the hope that the Table permits adequate time for injured individuals to seek compensation, and recommended that language be added to the regulations to provide an avenue for appeal to the timeframes established in the Table, should an individual become ill or exhibit symptoms related to the vaccine beyond the established Table timeframes.

The Secretary wishes to emphasize that an injury that manifests itself outside of the timeframe listed on the Table may still be a covered injury. The Secretary recognizes that symptoms can occur subsequent to the Table timeframes in some cases. In this event, the individual may be found medically eligible if he or she submits evidence to show that it is more likely than not that the smallpox vaccine or other covered countermeasure, or the vaccinia contracted from accidental vaccinia exposure, actually caused the injury. SEPPA does not provide an avenue for appeal of the timeframes established in the Table. Thus, the Secretary disagrees with the commenter that there is a need for an appeal process for the time intervals. However, the Secretary has established a reconsideration process for re-review of the Program's determinations on medical/program and financial eligibility requirements through the Administrative Regulations for this Program published in the **Federal Register** on December 16, 2003. If a requester is not satisfied with the Program's decisions, the requester has the right to seek reconsideration of any adverse determination.

There were two additional comments regarding time intervals. One commenter wanted to make sure that HHS clarifies that the time intervals relate to the timeframe of the first symptom or manifestation of onset of injury, not to the timeframe of the diagnosis. The Secretary agrees with this comment and has clarified this issue by inserting appropriate language into this Final Rule.

The other commenter requested that the time intervals of 21 days be extended because it may take 6 to 8 weeks for the scab at the vaccination site to fall off. The Secretary does not agree to change the time intervals on the Table because these timeframes are not related to the time it takes for the scab to fall off spontaneously.

B. Additions of Injuries to the Table

There were three comments pertaining to the injuries listed on the Table. Two comments suggested that the Table should be amended to include myocardial infarction and tremors, respectively. The other commenter indicated that the list of injuries limited to those published in the August 27, 2003, Interim Final Rule, was incomplete.

The Secretary does not concur with these comments. At this time, there is no clear scientific evidence to support the inclusion of myocardial infarction, tremors, or other conditions as additional Table injuries, and the commenters did not provide additional evidence showing it would be appropriate to add more Table injuries. Should an individual have any injury believed to have resulted from the administration of, or exposure to, the smallpox vaccine that is not listed on the Table, he or she may nevertheless be eligible for benefits and should submit a request to the Program.

C. The Documentation Requirements

One commenter raised the issue that the Table regulations exceed the statute's requirements in terms of medical injury documentation burden and related cost. The commenter believes that these regulations are far more onerous than SEPPA requires, specifying that the issues of documenting method of treatment, identification of injury, etc., are not even referenced in the statute. The commenter stated that the burdensome and costly requirements for first responders should immediately be rescinded.

The Secretary disagrees with the commenter that the documentation requirement is onerous and exceeds legislative intent. The specific comment

relates to the requirement for a treatment plan in order to be considered for a Table injury. This language appears in five of the twelve Table injuries. The requirement for a treatment plan is case-specific and applies only in certain circumstances where there is an issue of needed long-term medical/surgical care. Requesters do not need to provide one in order to be considered for a Table injury.

The commenter also wrote that first responders are obligated to pay out of their own pockets for immediate treatment and again for a detailed surgical treatment plan. Section 264(b) of the Smallpox Emergency Personnel Protection Act of 2003 establishes that the government is the payer of last resort after all other payments have been or will be made to an individual for medical care directly resulting from an injury caused by the smallpox vaccination. Individuals are reimbursed for their out-of-pocket medical expenses in accordance with the Act.

D. Other Issues Raised by Commenters

One commenter raised the concern that the Table regulations cover only those injuries caused by the vaccinia virus and not all components of the smallpox vaccine. Another commenter was concerned about the scope of the Program and if it would cover the general population.

In reference to the issue of the components in the smallpox vaccine, the Secretary concurs that the components of a smallpox vaccine may cause a covered injury. Therefore, the Secretary has clarified in this final regulation that a covered injury can be caused not only by vaccinia, but by any component or constituent of the smallpox vaccine.

In response to the concern about the scope of the legislation, SEPPA only covers individuals who are members of HHS-approved smallpox emergency response plans and individuals who contracted vaccinia from them or from other eligible contacts. SEPPA is not designed to provide benefits to the general population.

Explanation of Provisions

Some of the comments received indicate to the Secretary that there may be confusion as to the significance of the Table. Therefore, this Final Rule clarifies that having an injury listed on the Table is only *one* of the ways that an individual can show medical eligibility for Program benefits. The Secretary emphasizes that the purpose of the Table is merely to provide potential requesters who can demonstrate that they sustained a Table injury within the specified time interval with the *presumption* that the smallpox vaccine caused the injury. However, sustaining an injury not listed on the Table (including an injury resulting from administration of another covered countermeasure), or manifesting a Table injury outside of the time interval listed, simply means that the presumption does not apply. In those cases, the individual must show that it is more likely than not (*i.e.*, by a preponderance of the evidence), that administration of the smallpox vaccine (or other covered countermeasure), or exposure to the vaccine in the case of contacts, was the cause of the injury. The Secretary encourages such individuals to file a request for benefits. The Program has found individuals with Table or non-Table injuries to be medically eligible.

As previously mentioned, this Final Rule also clarifies that the time intervals listed on the Table refer specifically to the period in which the first symptom or manifestation of onset of injury must appear following administration of the smallpox vaccine or exposure to vaccinia, in order for the presumption of causation to apply. The time intervals listed have no relevance whatsoever to when the injury is diagnosed.

Thus, the Secretary herein amends § 102.21(a) of the Interim Final Rule by adding language to the subheading of the Table that lists the time intervals. This additional language makes it clear that these time intervals refer only to the first symptom or manifestation of onset of the injury, not to the time interval within which a diagnosis of the injury must be made.

The Secretary also wishes to make it clear that a covered injury can be caused not only by the vaccinia component of the smallpox vaccine, but by any component or constituent of the vaccine.

Further, this Final Rule updates the effective period of the Secretary's Declaration. The Secretary has amended the effective period of the Declaration by extending it each year. The Secretary will continue to publish a Notice in the **Federal Register** as needed to update any further amendments to the effective period. These amendments to the Declaration are made pursuant to the Secretary's authority under section 261(a)(5) of SEPPA (section 224(p)(2)(A) of the Public Health Service Act).

Additionally, this Final Rule reflects the change in name of the Special Programs Bureau, which has been renamed the Healthcare Systems Bureau. Finally, this regulation updates the address of the Program Office. The new address, to which all mail to the Program should be sent, whether by U.S. Postal Service, commercial carrier, or private courier service, is: Parklawn Building, Room 11C–06, 5600 Fishers Lane, Rockville, Maryland 20857.

Justification of Waiver of Delay of Effective Date

The Secretary has found that a delay in the effective date of this Final Rule with an amendment is unnecessary and contrary to the public interest. The adoption of the Interim Final Rule as a Final Rule reflects an amendment and clarifications that are a result of comments received on the Interim Final Rule and, therefore, will be helpful to requesters without imposing additional burdens. It has no effect on any individual's rights or responsibilities.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this Final Rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. This rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

Unfunded Mandates Reform Act of 1995

The Secretary has determined that this Final Rule will not have effects on State, local, or tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement

The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Impact on Family Well-Being

This rule will not adversely affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this Final Rule may have a positive impact on the disposable income and poverty elements of family well-being to the extent that injured persons (or their survivors who are eligible to receive compensation) receive benefits without a corresponding burden being imposed on them.

Paperwork Reduction Act

The information collection requirements remain unchanged.

List of Subjects in 42 CFR Part 102

Benefits, Biologics, Compensation, Immunization, Public health, Smallpox, Vaccinia.

Dated: November 14, 2005.

Elizabeth M. Duke,

Administrator.

Approved: December 22, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on May 18, 2006.

■ For the reasons stated above, the Secretary is adopting the Interim Final Rule adding 42 CFR part 102, published at 68 FR 51492 on Wednesday, August 27, 2003, as a Final Rule with the following amendment:

PART 102—SMALLPOX COMPENSATION PROGRAM

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 42 U.S.C. 216, 42 U.S.C. 239–239h.

■ 2. In section 102.21, the table in paragraph (a) is amended by adding the following sentence at the end of the time interval description subheading:

§ 102.21 Smallpox (Vaccinia) Vaccine Injury Table.

(a) * * *

Please note that these time intervals do not refer to time periods for the date of diagnosis of the injury.

* * * * *

[FR Doc. 06–4761 Filed 5–23–06; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906—AA61

Smallpox Vaccine Injury Compensation Program: Administrative Implementation

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Adoption of interim final rule as final rule with amendments.

SUMMARY: This document adopts the Smallpox Vaccine Injury Compensation Program (the Program) Administrative Implementation Interim Final Rule as the Final Rule with amendments, as follows: explains how the term "child" survivor is defined; updates the effective period of the Secretary's Declaration Regarding Administration of Smallpox Countermeasures (the Declaration); corrects an error in § 102.20(d) to clarify that one of the Smallpox (Vaccinia) Vaccine Injury Table requirements to establish a covered Table injury is the first symptom or manifestation of onset of the injury in the Table time period specified; reflects the change in name from the Special Programs Bureau to the Healthcare Systems Bureau; provides the new address of the Bureau's Associate Administrator, and the new address of the Program Office; clarifies that no payments are authorized for fees or costs of personal representatives, including those of attorneys; and corrects a typographical error in § 102.83(c) to make clear that the Secretary determines the timeframe for submission of required documentation.

DATES: The interim final rule, published on December 16, 2003, was effective on that date, and is adopted as the final rule with an amendment effective May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, (301) 443–2330.

SUPPLEMENTARY INFORMATION:

Background

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Pub. L. 108–20, 117 Stat. 638, directed the Secretary of Health and Human Services (the Secretary) to establish the Program. Secondary to other payers, the Program provides medical, lost employment income, and death benefits for eligible individuals who sustained covered injuries as a result of receiving smallpox vaccine or other covered countermeasures, or as a result of accidental exposure to vaccinia. Congress appropriated $42 million in fiscal year (FY) 2003 for the administration of, and payment of benefits under, the Program. The Consolidated Appropriations Act of 2005 reduced this amount by $20 million. The Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act, 2006 (Pub. L. 109–149) further reduced the Program's appropriation by $10 million to a total of $12 million. Section 220 of the Appropriations Act of 2006 (Pub. L. 109–149) further reduced the Program's appropriation by $10 million to a total of $12 million.

Individuals who receive a smallpox vaccination under a Department of Health and Human Services (HHS), State, or local emergency response plan approved by HHS within the time period described in the Secretary's Declaration, and who sustain a covered injury, may be eligible for benefits under SEPPA. Individuals who contracted vaccinia through contact with such individuals or other eligible vaccinia contacts and who sustain a covered injury may also be eligible for benefits. In the case of death resulting directly from receipt of the smallpox vaccine or exposure to vaccinia by eligible individuals, certain of their survivors may be considered for death benefits. If an eligible individual who sustained a covered injury dies from another cause before payment of benefits has been made under the

Program, the estate may qualify for payment of unreimbursed medical expenses incurred and employment income lost as a result of the covered injury, secondary to other payers.

SEPPA directed the Secretary to establish a table identifying adverse effects (including injuries, disabilities, conditions, and deaths) that shall be presumed to result from the administration of, or exposure to, the smallpox vaccine, and the time interval in which the first symptom or manifestation of each listed injury must appear in order for such presumption to apply. An Interim Final Rule for the Smallpox (Vaccinia) Vaccine Injury Table was published in the **Federal Register** on August 27, 2003 (68 FR 51492). Following a public comment period, the Final Rule was published on May 24, 2006.

An Interim Final Rule for the Administrative Implementation of the Program was published in the **Federal Register** on December 16, 2003 (42 CFR Part 102), with a 60-day public comment period. The public comment period ended on February 17, 2004. HHS received no comments.

Technical corrections to the Interim Final Rule were published in the **Federal Register** on February 17, 2004 (69 FR 7376).

Explanation of Provisions

In accordance with section 266(a)(2)(A) of the Public Health Service Act, added by SEPPA, death benefit amounts payable under the Program are equal to those available under the Public Safety Officers' Benefits (PSOB) Program. The PSOB Program death benefit amount is subject to change on October 1 each year. For example, in fiscal year (FY) 2003, the amount was $262,100; by FY 2006 the amount had increased to $283,385. To keep the public informed of the current amount, the Secretary will publish a Notice in the **Federal Register** announcing the new amount for each fiscal year consistent with the rate established under the PSOB Program. In accordance with PSOB Program provisions, the amount payable is determined by the date of death of the smallpox vaccine recipient or vaccinia contact, not the date of payment.

Also, this Final Rule is adding to the definition section, § 102.3, a new paragraph (e) to clarify that, for purposes of survivorship benefits under the Program, the term "child" is defined in accordance with the PSOB Program's statutory definition in 42 U.S.C. at § 3796b(3), as implemented in 28 CFR Part 32, as amended.

An adult child survivor of a deceased smallpox vaccine recipient or vaccinia contact may claim eligibility for death benefits if, at the time of the recipient or contact's death, he or she is over 18 years of age and incapable of self-support because of physical or mental disability. Examples of the types of supporting documentation requesters should submit to support eligibility as a disabled adult child survivor include, but are not limited to: Determination of disability letter, or award letter, issued by the Social Security Administration; determination of disability by a court of competent jurisdiction (*e.g.*, requiring the need for a guardianship or conservatorship); and medical documentation of the physical or mental condition that precludes the capacity for self-support.

The Secretary has amended the Declaration by extending the dates of its effective period each year. The Secretary will continue to publish a notice in the **Federal Register** as needed to update further the effective period of the Declaration. These amendments to the Declaration are made pursuant to the Secretary's authority under section 261(a)(5) of the Public Health Service Act, added by SEPPA and section 224(p)(2)(A) of the Public Health Service Act. Therefore, this Final Rule updates the definition of the effective period of the Declaration in § 102.3(k) of the Interim Final Rule (redesignated now as paragraph (l) to accommodate insertion of the new paragraph (e)).

For the presumption to apply that an injury resulted from the administration of, or exposure to, the smallpox vaccine, the injury must be listed on the Smallpox (Vaccinia) Vaccine Injury Table, and the first symptom or manifestation of onset of the injury must occur within the time interval listed on the Table. Otherwise, the presumption of causation does not apply, and the requester must prove causation. The parenthetical example given in § 102.20(d) of the Interim Final Rule erroneously states that one of the Table requirements to establish a covered injury is "onset of the injury within the time interval included on the Table." However, it is not the onset of the *injury* that must manifest within that time interval. Rather, the requirement is that the onset of the *first symptom or manifestation of the injury* must manifest within the specified time period. Therefore, this Final Rule herein amends the parenthetical example in § 102.20(d) to reflect the inadvertent omission of this language.

This Final Rule also reflects the change in name of the HRSA Bureau that operates the Program. The Special Programs Bureau has been renamed the Healthcare Systems Bureau. Therefore, §§ 102.40(a) and (b), 102.41(a) and (b), and 102.90(b)(1),(2), and (c)) are amended accordingly.

Further, the Program Office has a new address: Parklawn Building, Room 11C–06, 5600 Fishers Lane, Rockville, Maryland 20857. This is the address to which all mail to the Program should be sent, whether by U.S. Postal Service, commercial carrier, or private courier service. Thus, §§ 102.40(a) and (b), and 102.41(a) and (b)) are amended to reflect this change. Program telephone numbers remain unchanged.

In addition, this Final Rule updates the address for the Associate Administrator of the Healthcare Systems Bureau listed in §§ 102.90(b)(1) and (2). All letters seeking reconsideration of the Secretary's eligibility or benefits determinations, whether sent by U.S. Postal Service, commercial carrier, or private courier service, should be sent to the Associate Administrator, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12–105, 5600 Fishers Lane, Rockville, Maryland 20857.

The Program is not authorized to pay, or reimburse a requester for fees or costs incurred by the requester in using a personal representative, including legal fees, to file for benefits on his or her behalf (see Frequently Asked Questions on the Program's Web site at *http://www.hrsa.gov/smallpoxinjury*). Therefore, for clarification purposes, § 102.44(d) of the Interim Final Rule is changed in this Final Rule to read as follows: "No payment or reimbursement for representatives' fees or costs. The Act does not authorize the Secretary to pay, or reimburse for, any fees or costs associated with a requester's use of a personal representative under this Program, including those of an attorney." The Program does not provide guidelines for legal fees.

Finally, this regulation also corrects a typographical error in § 102.83(c) of the Interim Final Rule regarding interim payments of benefits. The fourth sentence of that subsection should read: "If a requester's documentation is incomplete, the requester must submit the required documentation within the timeframe determined by the Secretary" not "determined by the requester" as erroneously stated.

Justification of Waiver of Delay of Effective Date

The Secretary has found that a delay in the effective date of this Final Rule is unnecessary and contrary to the public interest. The adoption of the Interim Final Rule as a Final Rule

reflects amendments, updates, and clarifications that will be helpful to requesters without imposing additional burdens. It has no effect on any individual's rights or responsibilities.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this Final Rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. This rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

Unfunded Mandates Reform Act of 1995

The Secretary has determined that this Final Rule will not have effects on State, local, or tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement

The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Impact on Family Well-Being

This rule will not adversely affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this Final Rule may have a positive impact on the disposable income and poverty elements of family well-being to the extent that injured persons (or their survivors who are eligible to receive compensation) receive benefits without a corresponding burden being imposed on them.

Paperwork Reduction Act

The information collection requirements remain unchanged.

List of Subjects in 42 CFR Part 102

Benefits, Biologics, Compensation, Immunization, Public health, Smallpox, Vaccinia.

Dated: November 14, 2005.

Elizabeth M. Duke,

Administrator.

Approved: December 22, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on May 18, 2006.

■ For the reasons stated above, the Secretary is adopting the Interim Final Rule adding 42 CFR part 102, published at 68 FR 70080 on Tuesday, December 16, 2003, as amended on February 17, 2004, at 69 FR 7376, as a Final Rule with the following amendments:

PART 102—SMALLPOX VACCINE INJURY COMPENSATION PROGRAM

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 42 U.S.C. 216, 42 U.S.C. 239–239h.

■ 2. Amend § 102.3 to read as follows:

■ A. Redesignate paragraphs (e) through (bb) as paragraphs (f) through (cc) and add new paragraph (e) to read as set forth below; and

■ B. Amend newly designated paragraph (l) (formerly designated paragraph (k)) to read as set forth below:

§ 102.3 Definitions

* * * * *

(e) *Child* means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased smallpox vaccine recipient or vaccinia contact who, at the time of the recipient or contact's death is:

(1) 18 years of age or under; or

(2) Over 18 years of age and a student as defined in section 8101 of title 5, United States Code; or

(3) Over 18 years of age and incapable of self-support because of physical or mental disability.

* * * * *

(l) *Effective period of the Declaration* means the time span specified in the Declaration, as amended by the Secretary.

* * * * *

§ 102.20 [Amended]

■ 3. Amend § 102.20, paragraph (d) introductory text by adding the words "the first symptom or manifestation of" before the word "onset" in the parenthetical example.

§ 102.40 [Amended]

■ 4. Amend § 102.40 as follows:

■ A. In paragraph (a), remove the words "Special Programs Bureau", and add in their place "Healthcare Systems Bureau", and remove the words Room "16C–17", and add in their place "Room 11C–06";

■ B. In paragraph (b), remove the words "Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814" and add in their place "Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–06, 5600 Fishers Lane, Rockville, Maryland 20857".

§ 102.41 [Amended]

■ 5. Amend § 102.41 as follows:

■ A. In paragraph (a), remove the words "Special Programs Bureau", and add in their place "Healthcare Systems Bureau", and remove the words Room "16C–17", and add in their place "Room 11C–06";

■ B. In paragraph (b), remove the words "Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814" and add in their place "Healthcare Systems Bureau, Health Resources and Services Administration,

Parklawn Building, Room 11C–06, 5600 Fishers Lane, Rockville, Maryland 20857".

■ 6. Revise § 102.44 paragraph (d) to read as follows:

§ 102.44 Representatives of requesters.

* * * * *

(d) No payment or reimbursement for representatives' fees or costs. The Act does not authorize the Secretary to pay, or reimburse for, any fees or costs associated with the requester's use of a personal representative under this Program, including those of an attorney.

§ 102.83 [Amended]

■ 7. Amend § 102.83, paragraph (c), by removing the second occurance of the word "requester" and in its place add the word "Secretary" at the end of the fourth sentence of that section.

§ 102.90 [Amended]

■ 8. Amend § 102.90 as follows:

■ A. In paragraph (b)(1) remove the words "Special Programs Bureau", and add in their place "Healthcare Systems Bureau," and remove the words "Room 16C–17, and add in their place "Room 12–105";

■ B. In paragraph (b)(2) remove the words "Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814," and add in their place "Healthcare Systems Bureau, Parklawn Building, Room 12–105, 5600 Fishers Lane, Rockville, Maryland 20857";

■ C. In paragraph (c), remove the words "Special Programs Bureau" and add in their place "Healthcare Systems Bureau".

[FR Doc. 06–4762 Filed 5–23–06; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 87

[ET Docket No. 00–258, WT Docket No. 02–8; FCC 06–43]

Advanced Wireless Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies Petitions for Reconsideration and affirms the Commission's decision that the Broadcast Auxiliary Service and other incumbent services will share the 2025–2110 MHz band with relocated Department of Defense facilities.

DATES: Effective June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2803, e-mail: *Ted.Ryder@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order,* ET Docket No. 00–258, and WT Docket No. 02–8, FCC 06–43, adopted April 5, 2006, and released April 11, 2006. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Report and Order

1. The Commission considered two petitions for reconsideration ("Petitions") of the *Seventh Report and Order,* 69 FR 77938, December 29, 2004, in this proceeding, one filed by the Association for Maximum Service Television and National Association of Broadcasters (together, "MSTV/NAB") and the other by the Society of Broadcast Engineers, Inc. ("SBE"). In the Seventh Report and Order ("AWS Seventh Report and Order") in this proceeding, the Commission, among other things, allowed primary access to the band 2025–2110 MHz for Department of Defense ("DOD") uplink earth stations at 11 sites to support military space operations (also known as tracking, telemetry, and commanding or "TT&C") on a co-equal basis with stations in the incumbent Television Broadcast Auxiliary Service ("BAS"), Cable Television Relay Service ("CARS"), and Local Television Transmission Service ("LTTS"). For simplicity, in the remainder of this document the BAS, LTTS, and CARS services collectively will be referred to as BAS. The actions taken in the AWS Seventh Report and Order were specifically designed to facilitate the introduction of new advanced wireless services ("AWS") in the band 1710–1755 MHz by providing replacement spectrum for clearing that band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions were consistent with proposals made in the AWS Fourth NPRM, 68 FR 52156, September 2, 2003, and previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration ("NTIA") *2002 Viability Assessment,* which adderssed relocation and reaccommodation options for Federal Government operations in the band 1710–1755 MHz.

2. In the *Memorandum Opinion and Order,* the Commission denied both the MSTV/NAB and the SBE petitions. In this regard, the Commission found that the Petitioners have not raised any new arguments or concerns that were not already considered by the Commission in its adoption of the *AWS Seventh Report and Order* and that the Commission's decision properly addressed the relevant facts in order to reach its conclusion that BAS and Federal Government operations will be able to co-exist in the band. The Commission, however, provided additional clarification on a matter raised in the SBE petition.

3. In the *AWS Seventh Report and Order,* the Commission undertook the specific task of reaccommodating Federal users in order to make the band 1710–1755 MHz available for AWS use. This decision was part of a larger and substantially more complex proceeding designed to make spectrum available for a variety of new and innovative wireless services and involving a variety of bodies, including this Commission, Federal stakeholders as represented through NTIA, and Congress.

4. In the *AWS Seventh Report and Order* decision, the Commission recognized the concerns of the broadcasting community that sharing of the band 2025–2110 MHz ("the 2 GHz band") by TV BAS stations and DOD TT&C uplink earth stations would be challenging in some instances, given the high power and close proximity of some of these earth stations to nearby cities served by BAS. However, it affirmed its confidence that such sharing is feasible and will promote the public interest, particularly in the ultimate provision of AWS to the public. To maintain its longstanding policy that first-licensed facilities have the right of protection from later-licensed facilities operating in the same band, and to facilitate compatible operations, the Commission required each DOD earth station to coordinate with all potentially affected BAS stations prior to earth station authorization. Additionally, for the rare situation where no reasonable coordination can be negotiated, the Commission stated that the issue may be

raised to the FCC and NTIA to jointly arbitrate resolution.

Petitions

5. *MSTV/NAB Petition for Reconsideration.* In their petition for reconsideration, MSTV/NAB claim that the Commission improperly established a framework for BAS-Federal Government coordination in the band because it did not require NTIA to disclose the complete technical parameters for all of the 11 DOD TT&C uplink earth stations to be relocated to the 2 GHz band. MSTV/NAB argue that without this information, it is impossible to assess the impact of the earth stations on incumbent BAS operations and therefore the Commission's confidence that spectrum sharing is feasible is unsupportable.

6. MSTV/NAB also assert that the Commission fatally failed to properly consider two studies provided in MSTV/NAB's comments in response to the *AWS Fourth NPRM,* which MSTV/NAB contend show that relocation of the DOD TT&C uplink earth stations would require extraordinary coordination and would result in extensive interference to incumbent BAS operations. One of these studies identified all BAS facilities within the coordination zone of each DOD earth station, showing that a large number of BAS licensees would need to coordinate with each earth station, some with multiple earth stations, and a significant number on an ongoing, proactive basis, to prevent interference from the earth stations. The study concluded that a significant impact on BAS licensees in large, congested markets would result. The second study purported to demonstrate that the high powers of DOD earth stations would cause interference, and in some cases cause complete overload, to nearby BAS receive sites, such as those at Goffstown, New Hampshire, any time the earth station operates and concluded that the DOD earth stations would cause harmful interference to nearby BAS systems much of the time. These studies, MSTV/NAB argue, contain evidence that the DOD earth stations would cause unavoidable interference to BAS facilities. As such, they conclude that the Commission's decision mandating sharing was both unsupported by the evidence in the record and inconsistent with the Commission's goals.

7. Finally, MSTV/NAB argue that the Commission erred in not demonstrating, by specific evidence, that the spectrum sharing techniques that can permit sharing will be effective in situations where BAS and DOD facilities will share the band 2025–2110 MHz. As an example, MSTV/NAB note that one of the techniques, time-sharing, would present broadcasters with the choice of covering a breaking news story with a corrupted news feed, or not covering the story at all.

8. In light of the deficiencies that they allege, MSTV/NAB contend that sharing of the 2025–2110 MHz BAS band with DOD operations should not be allowed until the record shows that measures to protect incumbent BAS operations would be feasible and productive. MSTV/NAB also assert that we should facilitate prospective coordination efforts by establishing a formal process through which the Commission, NTIA, and DOD would investigate, with input from affected parties, the feasibility of coordination and would define the precise technical parameters to be used for coordinating each of the 11 DOD TT&C earth stations.

9. *SBE Petition for Reconsideration.* SBE indicates that, in its comments responding to the *AWS Fourth NPRM,* it stated that allowing up to 11 DOD TT&C earth stations to share the 2 GHz band with BAS incumbents would only be feasible if the BAS operations were converted to digital and the earth station antenna side-lobe suppression were improved by 30 dB by the addition of a "pie plate" shroud around the periphery of the antenna. SBE claims that these steps would result in up to a 60 dB improvement in the desired-to-undesired (D/U) signal ratio at fixed receive-only (RO) antennas associated with electronic newsgathering ("ENG") operations, which it asserts could change the BAS–DOD relationship from frequency sharing to frequency re-use. Accordingly, in its petition for reconsideration, SBE asks us to require that all DOD TT&C earth stations have their sidelobe suppression upgraded to at least 90 dB. Similarly, SBE faults our conclusion that the use of shielding berms around an earth station would be one means of enabling sharing of the band. SBE claims that such berms would need to be impracticably high—100 to 200 feet above ground level—to protect ENG RO antennas typically located on tall buildings, towers, or mountain tops, and thus would severely restrict the earth station's low elevation look angles to a degree unacceptable to DOD. SBE also claims that the Commission inaccurately characterized SBE's position as to whether the 11 DOD TT&C earth stations could successfully share the 2 GHz band with BAS operations converted to digital by omitting SBE's contention that both digital operations and earth station side-lobe suppression measures must be required.

10. SBE asks that we confirm that a DOD TT&C uplink earth station at 2 GHz must demonstrate protection not only to fixed TV BAS links, such as studio-transmitter links ("STLs") and TV relays (also known as inter-city relays ("ICR"), but also to fixed RO antennas associated with ENG mobile TV pickups ("TVPUs"), which are more difficult to protect, because no allowance can be made for antenna directivity, as such antennas are either omnidirectional or remotely steerable. SBE also seeks clarification of the statement in paragraph 27 of the *AWS Seventh Report and Order,* that "[f]or those rare situations where no reasonable coordination can be negotiated, the issue may be raised to the FCC and NTIA to jointly arbitrate resolution." Specifically, SBE expresses concern that in cases where DOD cannot demonstrate protection to ENG RO sites, joint FCC/NTIA arbitration may overrule the protection requirements and authorize the DOD earth station over BAS objections.

Decision

11. The record of this proceeding provided sufficient basis for the Commission to determine that, as a general proposition, incumbent BAS facilities will be able to share the band 2025–2110 MHz with relocated DOD TT&C uplink earth stations, and doing so serves the public interest by promoting spectrum efficiency and allowing for the rapid introduction of new and innovative AWS services. In the *AWS Seventh Report and Order,* the Commission adopted an approach that paired the application of a variety of interference mitigation techniques with a requirement of coordination (and further FCC/NTIA arbitration and resolution, if necessary) to allow for shared, co-primary use of the band. Neither MSTV/NAB nor SBE has raised any new arguments or concerns that were not already considered or would otherwise warrant reconsideration of that decision and we are therefore denying their petitions.

12. In the *AWS Seventh Report and Order,* the Commission determined that sharing techniques currently exist that can be deployed to enable the 11 DOD earth stations to be engineered into 2 GHz without harming existing BAS operations. Although the petitions question whether particular interference mitigation techniques would be practical in particular situations, they do not refute the Commission's determination that such techniques are established and accepted means of allowing for co-channel operations and can collectively resolve a variety of

sharing situations. Moreover, to ensure successful coordination in individual situations, the Commission required that coordination be accomplished with BAS licensees of stations within the coordination contour of the earth station, consistent with Appendix 7 of the International Telecommunication Union ("ITU") Radio Regulations, and engage the local BAS frequency coordinator(s), where available, in support of achieving such coordination. For the rare situation where no reasonable coordination can be negotiated, the Commission stated that the issue may be raised to the FCC and NTIA to jointly arbitrate resolution, and that the Commission will not concur with authorizing operation of any 2 GHz DOD TT&C uplink earth station in the absence of successful coordination between DOD and the affected BAS incumbents. Finally, to ensure that future BAS licensees have a means for coordinating their proposed operations with the DOD TT&C uplink earth station, DOD earth stations are required to maintain a point of contact for coordination. We conclude that the use of proven interference mitigation techniques and these coordination safeguards will ensure successful shared DOD–BAS use of the band.

13. We disagree with the contention by MSTV/NAB that we could not reach this conclusion without additional detailed and specific information about the 11 DOD TT&C uplink earth stations to be relocated in the 2 GHz band. In analyzing situations where BAS incumbents would be operating in proximity to the 11 DOD TT&C earth station sites, the Commission acknowledged that location data supplied by SBE indicate a significant potential for interference from DOD TT&C earth stations at the 11 sites into fixed receive-only receivers used in connection with BAS ENG TVPUs, and made its determination with this in mind. Site-specific analysis, however, is more appropriate to the point of coordination, well before construction and operation, as is normally the case for any satellite earth station or terrestrial station anticipating operation in spectrum in which coordination is required. At that time, DOD will be able to take timely advantage of the latest technological capabilities, as well as any changes to BAS equipment or use, and select the sharing and mitigation techniques most appropriate to each particular situation, to achieve the most effective sharing with BAS. Because the most effective techniques for sharing will be different at each site, the Commission purposely declined to mandate sharing techniques to be used in each situation. Doing so would have been impractical and was not necessary to the determination that sharing in the band is feasible. Moreover, the Commission also observed that while enabling relocation of earth station operations from the band 1755–1850 MHz to the 2 GHz band will over time allow DOD the flexibility to accommodate additional systems in the lower band, DOD may eventually choose not to use the 2 GHz band for some of its 11 sites, due to coordination difficulties with incumbent operations. Given the breadth of options available in each particular situation, we do not share MSTV/NAB's belief that more concrete and reliable scientific and technical evidence, or more investigation and analysis is necessary before we can require sharing in the band.

14. In acknowledging that sharing at some of the sites will be difficult, the Commission examined the particularly challenging situation in Denver. It determined that the Buckley AFB ("Buckley") site exhibited numerous and significant interference potentials into ENG receive antennas located on tall buildings and towers in nearby downtown Denver, generally to the west of Buckley, and into mountain site antennas further west, which may tend to point back toward Denver for coverage, and thus toward Buckley. The Commission noted that existing sharing techniques—such as limiting power, pointing direction, or vertical elevation of the DOD earth station antenna; adjusting satellite orbital coverage; constructing berms, installing RF shielding, or increasing earth station antenna sidelobe suppression; operation on adjacent ENG channels; taking advantage of ENG receive antenna sidelobe suppression; arranging time-sharing agreements; or using specific criteria which fully consider ENG power, modulation, and performance—could address those interference potentials. It concluded that because these sharing techniques, together with coordination, can facilitate implementation of the DOD TT&C earth stations at the 11 sites, there are no insurmountable technical obstacles that would prevent a primary, co-equal allocation for such earth stations at 2 GHz. The situations MSTV/NAB describe in the studies referenced in their petition for reconsideration are no more challenging than those at Buckley, and therefore, we conclude that the Commission fully considered the interference concerns of the nature raised by MSTV/NAB.

15. To the extent that MSTV/NAB are concerned that the number of BAS licensees with which a DOD earth station will need to coordinate is too large to be practical, we note that earth stations typically are subject to large coordination distances, varying up to 500 km, and consequently, in spectrum shared with terrestrial microwave systems, large numbers of licensees with which to coordinate. Earth station coordination in the 2 GHz band would be no exception in this regard. The effective engagement of local BAS frequency coordinators, where available in addition to BAS licensees, should be able to facilitate the accomplishment of coordination. Moreover, the establishment of a single BAS coordinator for large areas, for which the BAS coordinator for the Los Angeles/Southern California area may be a model, would be particularly advantageous. With respect to MSTV/NAB's concern for real-time coordination for on-going BAS TVPU ENG deployment, we observe that the need for, and extent of, such coordination can be determined at the time of the initial coordination of the earth station. At that time, the flexibility of both DOD earth station and on-going BAS ENG operations and antenna pointing may be considered, especially where the earth station site is close to a major TV market, as both services will at times need to operate in a manner not anticipated that could result in interference to BAS operations. It will therefore be in the interests of both to reach a mutually agreeable solution concerning coordination of on-going operations. In this connection, NTIA has agreed that the DOD earth station point of contact for coordination, as required by the *AWS Seventh Report and Order* for the coordination of future BAS stations, would also be available for the coordination of on-going BAS TVPU ENG operations, should such a requirement be determined by DOD, in concert with the local BAS coordinator(s) and licensees. Engagement of the earth station's point of contact for coordination, particularly in concert with the local BAS frequency coordinator(s), where available, will address MSTV/NAB's concern that some BAS TVPU ENG operations may face uncertainty regarding protection from DOD earth station transmissions. In view of the above, we disagree with MSTV/NAB's contention that the Commission acted in an arbitrary and capricious manner with respect to its evaluation of the studies MSTV/NAB reference in their petition.

16. We also deny SBE's request that we adopt specific sidelobe suppression criteria that would require the use of "pie plate" shrouds on all DOD TT&C earth station antennas. In the *AWS Seventh Report and Order*, the Commission declined a request by Gannett to impose certain conditions that would restrict DOD's options at the Buckley site, such as relocation of the DOD earth station away from Denver, limiting power or vertical elevation of its antenna, or increasing its antenna sidelobe suppression through the use of a "pie plate" shroud. The Commission found that maintaining flexibility on specific mitigation requirements, while requiring coordination to protect incumbent BAS operations, will allow the spectrum sharing situation to be customized for each site to meet the requirements when DOD needs to use the 2 GHz band. In this connection, we expect that the relationship between each DOD earth station and incumbent BAS stations need not be one of strict frequency re-use, as suggested by SBE. Rather, it should be one of frequency sharing, incorporating coordination of on-going operations where appropriate to accommodate the varying needs of both earth station and local ENG RO operations and antenna pointing, so that both services can operate at the same time in the same area, whether on the same or adjacent frequencies, to the maximum extent practicable.

17. Although MSTV/NAB are concerned that the coordination efforts we describe could be wasteful of BAS or DOD resources, we believe the alternative approach—establishing rigid sharing criteria and imposing particular mitigation measures that must be employed in every situation—would be more likely to waste valuable resources. By setting forth a plan to allow for sharing in this band, we take a significant and substantial step to allow for the development of AWS spectrum in the 1710–1755 MHz and 2110–2155 MHz bands, which furthers one of the primary goals of this proceeding and, in turn, promotes the public interest. Although MSTV/NAB claim that our approach "threatens to divert time and effort from spectrum allocation strategies that could more effectively accomplish the Commission's goals in this proceeding," it is unclear what these alternate strategies are, and the primary solution offered by the Petitioners—additional studies of BAS–DOD sharing—would likely hinder the quick and efficient deployment of AWS in the reallocated bands. However, as discussed, we have ample record to provide for shared use of the band; while the specifics of how DOD facilities will accomplish such sharing in individual cases can and should be determined closer to the time such facilities are deployed, we would interject considerable uncertainty into the ability of AWS to enter the 1710–1755 MHz band if we eliminated the provisions the Commission made in the *AWS Seventh Report and Order* for DOD to move its facilities into the spectrum at 2025–2110 MHz. Similarly, MSTV/NAB's concerns that difficulties associated with coordination could prove wasteful of BAS or DOD resources or deprive consumers of new or enhanced services that would be facilitated by BAS are, at best, speculative and do not outweigh the expected new and enhanced services and consumer benefits that the rapid deployment of the AWS spectrum is widely anticipated to provide. Finally we note that, as a practical matter, only the party initiating coordination (i.e., DOD) would be in a position to make the unlikely determination that further coordination of a particular DOD earth station may not be productive—or wasteful as suggested by MSTV/NAB—and only at the time of coordination, when specific BAS-earth station sharing parameters can be established.

18. We agree with MSTV/NAB's assessment that the successful coordination of a DOD TT&C earth station could inhibit the operation of some new BAS stations in an area. As the Commission observed in the *AWS Seventh Report and Order*, once a DOD TT&C uplink earth station has begun coordination, new BAS stations for which coordination begins later must accept interference from the DOD earth station, as is normally the case for new stations sharing spectrum on a co-primary basis. However, given the existing proliferation of BAS facilities, particularly TVPU stations, in the 2 GHz band, we believe it likely that many new BAS stations would in effect be protected indirectly through the earth station's protection of existing incumbents.

19. While we are denying the Petitions and affirming our decision that the BAS and other incumbent services will share the 2025–2110 MHz band with relocated DOD facilities, several matters the parties have raised warrant additional clarification. We confirm, as requested by SBE, that in coordinating a DOD earth station, DOD must demonstrate protection not only to fixed BAS point-to-point facilities such as STL stations, TV relay stations, and TV translator relay stations, but also to fixed RO antennas used in conjunction with BAS TVPU ENG operations. We believe that DOD can protect the point-to-point and fixed RO facilities through coordination with licensees or with the assistance of a local BAS frequency coordinator. Further, we recognize, as we did in the *AWS Seventh Report and Order*, and as noted by SBE, that protecting these ENG RO antennas will be challenging, as they must be able to receive, and thus point, in all directions—and in the case of omni-directional antennas, without any sidelobe suppression to reduce interference—to maximize coverage. We also clarify, at SBE's request, for those rare situations where no reasonable coordination can be negotiated, and the parties raise the issue with the Commission or NTIA for their joint arbitration, that the Commission will act expeditiously in concert with NTIA to consider the needs of both incumbent BAS stations and the DOD earth station. In such situations, the protection of BAS TVPU ENG RO sites, as well as fixed BAS sites, must be demonstrated. However, joint arbitration, if needed, must necessarily consider the flexibilities inherent to both earth station and local ENG RO operations and antenna pointing, and any arbitration will be binding on both parties. In this connection, we expect that both DOD and BAS interests will act in good faith to exercise flexibility, where feasible, in negotiating a reasonable accommodation and coordination, and thus obviate the need for arbitration.

Other Matters

20. As requested by NTIA in a letter of September 22, 2005, we are also adopting minor editorial changes and corrections to footnotes G122, G123, and US276 to the United States Table of Frequency Allocations in Section 2.106—Table of Frequency Allocations. Specifically, we merge footnotes G122 and G123 into a single footnote G122, deleting the historical cite to the Omnibus Budget Reconciliation Act of 1993 ("OBRA–93") in G123 and slightly modifying the language regarding Federal operations. We also modified the last sentence of footnote US276 to replace language describing other mobile telemetering uses as "secondary to the above uses"—which may lead to confusion as to those uses' underlying primary allocation status—with language stating that such uses "shall not cause interference to, or claim protection from, the above uses."

21. We also adopt minor editorial changes to § 87.303(d)(1) to align the language of that section with footnotes US78 and US276.

Regulatory Flexibility Analysis

22. *Final Regulatory Flexibility Certification:* The Regulatory Flexibility Act of 1980, as amended (RFA) [1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

23. The Fourth Memorandum Opinion and Order makes only minor editorial changes and corrections to the Rules adopted by the *Seventh Report and Order* in ET Docket No. 00–258. We find that these changes are insignificant.[6] We thus conclude that these changes will have only a minor effect on the incumbent Television Broadcast Auxiliary Service ("BAS") under part 74, Cable Television Relay Service ("CARS"), under part 78, and Local Television Transmission Service ("LTTS") under part 101, in the band 2025–2110 MHz, and on the Aviation Services under part 87 and Amateur Radio Service under part 97, in the band 2360–2400 MHz, and hence a minimal economic impact on licensees.[7] Therefore, we certify that the requirements of this Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Fourth Memorandum Opinion and Order, including a copy of this final certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, this Fourth Memorandum Opinion and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Congressional Review Act

24. The Commission will send a copy of this Fourth Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

25. Pursuant to Sections 1, 4(i), 7(a), 302, 303(f), 303(g), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302a, 303(f), 303(g), and 405, and Section 1.429 of the Commission's Rules, 47 CFR 1.429, this Fourth Memorandum Opinion and order *is adopted*.

26. Parts 1, 2 and 87 of the Commission's Rules *are amended* as specified in rule changes, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to Sections 1, 4(i), 7(a), 302, 303(f), and 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302a, 303(f), and 303(g).

27. The petition for reconsideration of the *AWS Seventh Report and Order* in this proceeding filed by the Association for Maximum Service Television and National Association of Broadcasters (together, "MSTV/NAB") *is denied*, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc. ("SBE"), *is granted in part and denied in part*. These actions are taken pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and Section 1.429 of the Commission's Rules, 47 CFR 1.429.

28. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of the Fourth Memorandum Opinion and Order, ET Docket No. 00–258 and WT Docket No. 02–8, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Parts 2 and 87

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, and 87 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e) unless otherwise noted.

§ 1.9005 [Amended]

■ 2. In § 1.9005, remove and reserve paragraph (p).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise pages 35 and 36.

■ b. In the list of United States (US) footnotes, revise footnote US276.

■ c. In the list of Federal Government (G) footnotes, revise footnote G122 and remove footnote G123.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. 632.

[6] See ¶ 22 (clarifications) and ¶ 23 (minor editorial changes), in the Fourth Memorandum Opinion and Order.

[7] *See* 47 CFR part 74, Subpart F—Television Broadcast Auxiliary Stations; 47 CFR part 78—Cable Television Relay Service; 47 CFR part 101, Subpart J—Local Television Transmission Service; 47 CFR part 87—Aviation Services, and 47 CFR part 97—Amateur Radio Service.

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	2200-2290 US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur		2300-2305 G122	2300-2305 Amateur	Amateur (97)
			2305-2310 US338 G122	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
			2310-2320 Fixed Mobile US339 Radiolocation G2 G120 US327	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327	Wireless Communications (27) Aviation (87)
			2320-2345 Fixed Radiolocation G2 G120 US327	2320-2345 BROADCASTING-SATELLITE 5.396 US327	Satellite Communications (25)
			2345-2360 Fixed Mobile US339 Radiolocation G2 G120 US327	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327	Wireless Communications (27) Aviation (87)
			2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2390 MOBILE US276	Aviation (87)
			2390-2395 MOBILE US276	2390-2395 MOBILE US276 AMATEUR	Aviation (87) Amateur (97)

			2395-2400 G122	2395-2400 AMATEUR	Amateur (97)
			2400-2417 5.150 G122	2400-2417 AMATEUR 5.150 5.282	ISM Equipment (18) Amateur (97)
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	
5.150 5.282 5.395	5.150 5.282 5.393 5.394 5.396				
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101)
2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147 2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US391 NG147	ISM Equipment (18) Satellite Communications (25) ISM Equipment (18) Satellite Communications (25) Wireless Communications (27)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to Earth) 5.351A 5.403 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.404 5.407 5.414 5.415A		2500-2655 5.339 US205	2500-2655 FIXED US205 MOBILE except aeronautical mobile 5.339	Wireless Communications (27)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.405 5.412 5.417C 5.417D 5.418B 5.418C	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.417C 5.417D 5.418B 5.418C	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.417A 5.417B 5.417C 5.417D 5.418 5.418A 5.418B 5.418C			

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United States (US) Footnotes

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US276 Except as otherwise provided for herein, use of the band 2360–2395 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Federal and non-Federal stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles, whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall not cause harmful interference to, or claim protection from interference from, the above uses.

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Federal Government (G) Footnotes

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G122 In the bands 2300–2310 MHz, 2395–2400 MHz, 2400–2417 MHz, and 4940–4990 MHz, Federal operations may be authorized on a non-interference basis to authorized non-Federal operations, and shall not constrain the implementation of any non-Federal operations.

* * * * *

PART 87—AVIATION SERVICES

■ 5. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

■ 6. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2395 MHz are assigned in the mobile service primarily for aeronautical telemetry and associated telecommand operations for flight testing of aircraft and missiles, or their major components. The bands 2310–2320 MHz and 2345–2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and associated telecommand operations associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of objects undergoing flight tests. In the band 1435–1525 MHz, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz. In the band 2360–2395 MHz, the following frequencies may be assigned for telemetry and associated telecommand operations of expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2395 MHz, all other mobile telemetry uses shall not cause harmful interference to, or claim protection from interference from, the above uses.

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[FR Doc. 06–4655 Filed 5–23–06; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 27, and 101

[ET Docket No. 00–258; WT Docket No. 02–353; FCC 06–45]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150–2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160–2175 MHz band, and modifies existing relocation procedures for the 2110–2150 MHz and 2175–2180 MHz bands. This document also establishes cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. We continue our ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. This document also dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot.

DATES: Effective June 23, 2006, except for §§ 27.1166(a), (b) and (e); 27.1170; 27.1182(a), (b); and 27.1186, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, Office of Engineering & Technology, (202) 418–7061.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Ninth Report and Order and Order*, ET Docket No. 00–258, WT Docket No. 02–353, FCC 06–45, adopted April 12, 2006, and released April 21, 2006. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Report and Order (ET Docket No. 00–258)

1. In the *Ninth Report and Order* ("*Ninth R&O*") in ET Docket No. 00–258, the Commission discusses the specific relocation procedures that will apply to BRS and FS incumbents in the 2150–2160/62 MHz and 2160–2175 MHz bands, respectively. We also discuss the cost-sharing rules that identify the reimbursement obligations for AWS and MSS entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. The Commission, in earlier decisions in this docket, has allocated the spectrum in the 2150–2160/62 MHz and 2160–2175 MHz bands for Advanced Wireless Service (AWS), which is the collective term we use for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications, including those using voice and data (such as Internet browsing, message services, and full-motion video) content. Advanced wireless systems could provide, for example, a wide range of voice, data, and broadband services over a variety of mobile and fixed networks. In establishing these relocation procedures, we facilitate the introduction of AWS in these bands, while also ensuring the continuation of BRS and FS service to the public.

A. Relocation of BRS in the 2150–2160/62 MHz Band

2. In the *AWS Fifth Notice of Proposed Rulemaking* in ET Docket 00–258 ("*AWS Fifth Notice*"), 70 FR 61752, October 26, 2005, the Commission proposed to generally apply our Emerging Technologies policies to the relocation procedures new AWS entrants should follow when relocating BRS incumbent licensees from the 2150–2160 MHz band. Comments generally support the proposal to use policies for relocation based on those used in the Commission's prior Emerging Technologies proceedings, with modifications to accommodate the incumbents in the band at issue. The Commission has used the Emerging Technologies policies in establishing relocation schemes for a variety of new entrants in frequency bands occupied by different types of incumbent operations. In establishing these relocation schemes, the Commission has found that the Emerging Technologies relocation policies best balance the interest of new licensees seeking early entry into their respective bands in order to deploy new technologies and services with the need to minimize disruption to incumbent operations used to provide service to customers during the transition.

3. BRS operators are providing four categories of service offerings today: (1) Downstream analog video; (2) downstream digital video; (3) downstream digital data; and (4) downstream/upstream digital data. Licensees and lessees have deployed or sought to deploy these services via three types of system configurations: High-power video stations, high-power fixed two-way systems, and low-power, cellularized two-way systems. Traditionally, BRS licensees were authorized to operate within a 35-mile-radius protected service area (PSA) and winners of the 1996 MDS auction were authorized to serve BTAs consisting of aggregations of counties. In the proceeding that restructured the BRS band at 2496–2690 MHz, the Commission adopted a geographic service area (GSA) licensing scheme for existing BRS incumbents. Therefore, BRS relocation procedures must take into account the unique circumstances faced by the various incumbent operations and the new AWS licensees.

4. As an initial matter, it appears that there are active BRS channel 1 and/or 2/2A operations throughout the United States, with many licensees serving a relatively small customer base of several thousand or fewer subscribers each. The Commission draws this conclusion from a number of sources of information, including BRS operations data submitted to the Commission in response to the *Order* portion of the *AWS Eighth R&O, 70 FR 61742, October 26, 2005, Fifth Notice and Order in ET Docket 00–258,* as well as pleadings in the record of this proceeding including representations made by WCA, an industry group that represents many BRS licensees. In response to the request for information to assist in determining the scope of AWS entrants' relocation obligations, 69 BRS licensees provided information on 127 stations. An examination of this data indicates that BRS operations can be found across the United States, in approximately 65 of the 176 U.S. Economic Areas.

5. WCA has estimated that BRS channels 1 and/or 2 are used in 30–50 markets in the U.S., providing "tens of thousands" of subscribers in urban and rural areas with wireless broadband service, and in some cases, multichannel video programming service. While Sprint Nextel appears to be the largest licensee with approximately 20,000 subscribers in 14 markets across the country, many operators have described smaller operations in more discrete geographic areas. Examples of these licensees include: Northern Wireless Communications, which provides broadband services on BRS channels 1 and 2 to approximately 725 subscribers from hub sites located in Aberdeen and Redfield, South Dakota, and multichannel video programming to approximately 950 subscribers; and W.A.T.C.H. TV, which provides more than 200 channels of digital video and audio to more than 12,000 subscribers in and around Lima, Ohio, with more than 5,000 subscribers using BRS channels 1 and 2 for upstream wireless broadband.

1. Relocation Process

6. *Transition Plan.* In the *AWS Fifth Notice,* the Commission proposed to require the AWS entrant to relocate BRS operations on a link-by-link basis, based on interference potential. We also proposed to allow the AWS entrant to determine its own schedule for relocating incumbent BRS operations so long as it relocates incumbent BRS licensees before beginning operation in a particular geographic area and subject to any other build-out requirements that may be imposed by the Commission on the AWS entrant. We further proposed to require that the AWS licensee relocate all incumbent BRS operations that would be affected by the new AWS operations, in order to provide BRS operators with comparable facilities.

7. The Commission anticipates that an AWS licensee will likely use a terrestrial network that is comprised of several discrete geographic areas served by multiple base stations. Unlike satellite systems, for example, whose signals can blanket the whole country simultaneously, the terrestrial nature of an AWS licensee's service allows for the gradual relocation of incumbents during a geographically-based build-out period. We recognize that this build-out period may take time because of the large service areas to be built out for new AWS networks, but expect that the AWS licensees and the incumbent BRS licensees will work cooperatively to ensure a smooth transition for incumbent operations. Upon review of the concerns raised in the record regarding our initial proposal for a link-by-link approach for relocation, we are convinced that adopting a "system-by-system" basis for relocation, based on potential interference to BRS, will better accommodate incumbent BRS operations. If an analysis shows that a BRS incumbent's "system" needs to be relocated, we will require that the base station and all end user units served by that base station be relocated to comparable facilities.

8. The Commission rejects proposals that would allow BRS incumbents to voluntarily self relocate, *i.e.*, to unilaterally determine when relocation would occur and to require AWS entrants to reimburse BRS incumbents based on a cost estimate for comparable facilities that were selected and deployed at the discretion of the incumbent without the involvement of and negotiation with the AWS licensee. We conclude that the diversity of incumbent BRS facilities and services makes it difficult to allow self relocation based on cost estimates and a cost cap, as some commenters suggest. As a practical matter, we expect a BRS incumbent to take an active role in the actual relocation of its facilities, including selecting and deploying comparable facilities, but we find that relocation should result from AWS–BRS negotiations or the involuntary relocation process discussed below. To address the concerns raised by BRS incumbents regarding the disclosure of their proprietary customer information to potential AWS competitors we do not require that AWS entrants be permitted to approach the incumbents' customers directly for relocation purposes. To balance AWS interests with the need to minimize disruption to an incumbent's customers, we do not allow the AWS entrant to begin operations in a particular geographic area until the

affected BRS incumbent is relocated (and subject to any other build-out requirements that may be imposed by the Commission on the AWS entrant).

9. *Comparable Facilities.* Under the Emerging Technologies policy, the Commission allows new entrants to provide incumbents with comparable facilities using any acceptable technology. Incumbents must be provided with replacement facilities that allow them to maintain the same service in terms of: (1) Throughput—the amount of information transferred within the system in a given amount of time; (2) reliability—the degree to which information is transferred accurately and dependably within the system; and (3) operating costs—the cost to operate and maintain the system. Thus, the comparable facilities requirement does not guarantee incumbents superior systems at the expense of new entrants. We note that our relocation policies do not dictate that systems be relocated to spectrum-based facilities or even to the same amount of spectrum as they currently use, only that comparable facilities be provided. In the *AWS Fifth Notice,* the Commission proposed that if relocation were deemed necessary, BRS incumbents with primary status would be entitled to comparable facilities and sought comment on how to apply the comparable facilities requirement to unique situations faced by BRS licensees

10. The Commission concludes that the Emerging Technologies policy of comparable facilities is the best approach to minimize disruption to existing services and to minimize the economic impact on licensees of those services, and requires that AWS licensees provide BRS incumbents with replacement facilities that allow them to maintain the same service in terms of: (1) Throughput—the amount of information transferred within the system in a given amount of time; (2) reliability—the degree to which information is transferred accurately and dependably within the system; and (3) operating costs—the cost to operate and maintain the system. In order to minimize disruption to the incumbent's customers, we also find that the replacement of CPE (*i.e.*, end user equipment) in use at the time of relocation and that is necessary for the provision of BRS service should be part of the comparable facilities requirement. Further, consistent with our Emerging Technologies policy, during involuntary relocation, new AWS entrants will only be required to provide BRS incumbents with enough throughput to satisfy their system use at the time of relocation, not to match the overall capacity of the system. For post-1992 licensees operating on a combination of BRS channels 1 and 2/2A (*e.g.*, integrated for downstream two-way broadband operations), whose operations are likely to transition to new channels in the restructured band at different times, we require the relocation of operations on both BRS channels 1 and 2/2A where the BRS licensee is using the same facility for both channels in order to provide service to customers.

11. The Commission does not further expand the comparable facilities definition as the parties request (*e.g.*, requiring only a wireless solution; adopting a definition used in the decisions in WT Docket 02–55 (collectively the "*800 MHz proceeding*"); and including internal administrative costs of the incumbent) and rejects parties' suggestions that comparable facilities requires only a wireless solution. Given advances in technology, *e.g.*, changing from analog to digital modulation and the flexibility provided by our existing relocation procedures to make incumbents whole, we believe that these differences should be taken into account when providing comparable facilities. In the *800 MHz proceeding*, incumbents in the 800 MHz band were being relocated within the same band as part of an overall band reconfiguration process designed to resolve the interference concerns of public safety licensees in the band. Therefore, a comparable facilities definition based on equivalent capacity was the better approach in the *800 MHz proceeding*, because, for example, the services, equipment, and propagation characteristics were not likely to change significantly in the newly reconfigured band. Further, the level of detail in the comparable facilities definition in the *800 MHz proceeding* was necessary to ensure that the costs for relocation and reconfiguration were easy to compute and verify since these expenses were to be used to calculate the credit due to the U.S. Treasury at the end of the 800 MHz transition. In the instant case, BRS incumbents are to be relocated to a new band where, for example, the equipment and propagation characteristics are different, and BRS incumbents use various technologies to deploy their services. We therefore believe that a more flexible definition of comparable facilities is justified in this case and find that the factors we have identified as most important for determining comparability (*i.e.*, throughput, reliability, operating costs, and now end user equipment) provide the degree of flexibility that will better serve the parties during negotiations. Finally, consistent with our Emerging Technologies policies, we will not require that new AWS licensees reimburse BRS incumbents for their internal costs for relocation because these costs are difficult to determine and verify.

12. The Commission further notes that under our relocation policies only stations with primary status are entitled to relocation. Because secondary operations, by definition, cannot cause harmful interference to primary operations nor claim protection from harmful interference from primary operations at frequencies already assigned or assigned at a later date, new entrants are not required to relocate secondary operations. Because BRS stations licensed after 1992 to use the 2160–2162 MHz band operate on a secondary basis a portion of BRS channel 2 will have secondary status in some cases, and this portion would not be entitled to relocation under existing Emerging Technologies policies. BRS stations licensed after 1992 to use the remaining portion of BRS channel 2 (2156–2160 MHz) operate on a primary basis and thus, would be entitled to relocation. In this situation, we expect the parties will work together in negotiating appropriate compensation for the costs to relocate four megahertz of a six megahertz block of spectrum. We therefore adopt our relocation policies regarding stations with primary and secondary status for the BRS.

13. *Leasing.* Some BRS licensees of channel(s) 1 and/or 2/2A currently lease their spectrum capacity to other commercial operators, and the Commission has determined that future leasing of BRS spectrum will be allowed under the Secondary Markets policy. In all leasing cases, the BRS licensee retains *de jure* control of the license and is the party entitled to negotiate for "comparable facilities" in the relocation band. The Commission concludes that the approach we proposed in the *AWS Fifth Notice* is consistent with the purpose of the "comparable facilities" policy to provide new facilities in the relocation band so that the public continues to receive service, and disagrees with commenters who request additional protections for or requirements on the lessee. Disputes with respect to private leasing agreements between the licensee and lessee are best addressed using applicable contractual remedies outside the Commission's purview. While we recognize the benefit of including the lessee in negotiations for comparable facilities, we do not believe a requirement for participation is necessary, and thus conclude that, in

cases where the BRS licensees continue to lease their spectrum to third parties when they relocate to the 2.5 GHz band, the licensee may include the lessee in negotiations but lessees would not have a separate right of recovery—*i.e.*, the new entrant would not have to reimburse both the licensee and lessee for "comparable facilities." We also adopt our proposal to allow incumbent BRS licensees to rely on the throughput, reliability, and operating costs of facilities operated by a lessee in negotiating "comparable facilities." BRS licensees may also use these same factors for determinations of "comparable facilities" during involuntary relocation, except that the BRS licensee may only rely on the facilities that are "in use" pursuant to 47 CFR 101.75 by the lessee at the time of relocation. Finally, in cases where the BRS licensee discontinues leasing arrangements prior to relocation, the lessee is not entitled to recover lost investment from the new AWS entrant.

14. *Licensee Eligibility.* In the *AWS Fifth Notice,* the Commission proposed that a primary BRS licensee whose license, prior to relocation, is renewed or assigned, or whose control of the license is transferred, will continue to be eligible for relocation. The Commission also proposed that no new licenses would be issued in the 2150–2160/62 MHz band if a grandfathered BRS license is cancelled or forfeited and does not automatically revert to the BRS licensee that holds the corresponding BTA license. The Commission adopts the proposals to apply the relocation policies to BRS incumbent primary licensees who seek comparable facilities at the time of relocation. Any incumbent licensee whose license is renewed before relocation would have the right to relocation. An assignment or transfer of control would not disqualify a BRS incumbent in the 2150–2160 MHz band from relocation eligibility unless, as a result of the assignment or transfer of control, the facility is rendered more expensive to relocate. In addition, if a grandfathered BRS license (*i.e.*, authorized facilities operating with a 35-mile-radius PSA) is cancelled or forfeited, and the right to operate in that area has not automatically reverted to the BRS licensee that holds the corresponding BTA license, no new licenses would be issued for BTA service in the 2150–2160/62 MHz band. Finally, in the *AWS Fifth Notice,* the Commission did not propose, nor do we suggest here, that BRS licensees would be entitled to relocation compensation as a consequence of reallocating BRS spectrum for other services. We note, in particular, that the Emerging Technologies relocation policies were intended to prevent disruption of existing services and minimize the economic impact on licensees of those services. Thus, where authorized BRS licensees have not constructed facilities and are not operational, there is no need to prevent disruption to existing services. We therefore conclude that BRS licensees whose facilities have not been constructed and are in use per § 101.75 of the Commission's rules as of the effective date of this *Report and Order* are not eligible for relocation.

15. Consistent with our Emerging Technologies relocation policy and in order to provide some certainty to new AWS licensees on the scope of their relocation obligation, the Commission generally adopts the proposals for major modifications described in the *AWS Fifth Notice*. Specifically, we find that major modifications to BRS systems that are in use made by BRS licensees in the 2150–2160 MHz band after the effective date of this *Report and Order* will not be eligible for relocation. Further, major modifications and extensions to BRS systems that are in use, as discussed below, will be authorized on a secondary basis to AWS systems in the 2150–2160 MHz band after the effective date of this *Report and Order*. In addition, BRS facilities newly authorized in the 2150–2160 MHz band after the effective date of this *Report and Order* would not be eligible for relocation. Based on our review of the record, and consistent with Emerging Technologies principles, we classify the following as types of modifications that are major, and thus not eligible for relocation: (1) Additions of new transmit sites or base stations made after the effective date of this *Report and Order;* and (2) changes to existing facilities made after the effective date of this *Report and Order* that would increase the size or coverage of the service area or interference potential and that would also increase the throughput of an existing system (*e.g.*, sector splits in the antenna system). However, we will allow BRS incumbents to make changes to already deployed facilities to fully utilize existing system throughput, *i.e.*, to add customers, even if such changes would increase the size or coverage of the service area or interference potential, and not treat these changes as major modifications. Because relocation of incumbent facilities depends on the availability of spectrum in the 2.5 GHz band, existing licensees must have some flexibility to continue to provide service in their communities, including adding new customers, until relocation occurs. On the other hand, new entrants should not be required to reimburse a potential competitor for the costs of its system expansion. All other modifications would be classified as major and their operations authorized on a secondary basis and thus not eligible for relocation. Where a BRS licensee who is otherwise eligible for relocation has modified its existing facilities in a manner that would be classified as "major" for purposes of relocation, that BRS licensee continues to maintain primary status (*e.g.*, unless it is classified as secondary for other reasons or until the sunset date); the major modifications themselves are considered secondary and not eligible for relocation. Thus, in such cases, the AWS licensee is only required to provide comparable facilities for the portions of the system that are primary and eligible for relocation.

16. Because the Commission has already identified relocation spectrum in the 2496–2690 MHz band (2.5 GHz band) for BRS licensees currently in the 2150–2160/62 MHz band (2.1 GHz band), the *AWS Fifth Notice* also sought comment on a proposal whereby the Commission would reassign 2.1 GHz BRS licensees, whose facilities have not been constructed and are not in use per § 101.75 of the Commission's rules, to their corresponding frequency assignments in the 2.5 GHz band as part of the overall BRS transition. Specifically, the Commission proposed to modify the licenses of these 2.1 GHz BRS licensees to assign them 2.5 GHz spectrum in the same geographic areas covered by their licenses upon the effective date of the *Report and Order* in this proceeding. Under this proposal, no subscribers would be harmed by immediately reassigning these licensees to the 2.5 GHz band, consistent with our policy. Further, these BRS licensees could become proponents in the transition of the 2.5 GHz band and avoid delay in initiating new service (they would be limited in initiating or expanding service in the 2.1 GHz band under other proposals put forth in the *AWS Fifth Notice*), and new AWS entrants in the 2.1 GHz band could focus their efforts on relocating the remaining BRS operations and their subscribers, facilitating their ability to clear the band quickly and provide new service.

17. Upon consideration of the record, the Commission does not mandate reassignment of BRS licensees who have no facilities constructed and in use as of the effective date of this *Report and Order,* but we will not preclude these BRS incumbents from voluntarily

seeking such reassignment from the Commission. Thus, these BRS licensees will not be forced to exchange their existing license in the 2.1 GHz band for an updated license authorizing operation in the 2.5 GHz band upon the effective date of this *Report and Order* because their corresponding channel assignments in the 2.5 GHz band may be unavailable for use pending the transition to the new band plan. We will instead afford these BRS licensees the flexibility to seek the reassignment of their licenses to their corresponding frequencies in the 2.5 GHz band at a time that is most convenient (*e.g.*, when the transition for their geographic area is complete). However, as noted above, BRS licensees who have no facilities constructed and in use as of the effective date of this *Report and Order* are not entitled to relocation to comparable facilities, regardless of whether they initiated operations under an existing (2.1 GHz band) or reassigned (2.5 GHz band) license.

2. Negotiation Periods/Relocation Schedule

18. Under the Emerging Technologies policies, there are two periods of negotiations—one voluntary and one mandatory—between new entrants and incumbents for the relocation of incumbent operations, followed by the involuntary relocation of incumbents by new entrants where no agreement is reached. In the *AWS Fifth Notice*, the Commission generally proposed to require that negotiations for relocation of BRS operations be conducted in accordance with our Emerging Technologies policies, except that the Commission proposed to forego a voluntary negotiation period and instead require only a mandatory negotiation period that must expire before an emerging technology licensee could proceed to request involuntary relocation. The Commission recognized that the new band where the BRS incumbents are to be relocated is undergoing its own transition process that may not be completed until at least 2008. In light of these considerations, the Commission proposed to forego a voluntary negotiation period and institute "rolling" mandatory negotiation periods (*i.e.*, separate, individually triggered negotiation periods for each BRS licensee) of three years followed by the involuntary relocation of BRS incumbents. The Commission also proposed that the mandatory negotiation period would be triggered for each BRS licensee when an AWS licensee informs the BRS licensee in writing of its desire to negotiate. If no agreement is reached during negotiations, the Commission proposed that an AWS licensee may proceed to involuntary relocation of the incumbent. In such a case, the new AWS licensee must guarantee payment of all relocation expenses, and must construct, test, and deliver to the incumbent comparable replacement facilities consistent with Emerging Technologies procedures. The Commission noted that under Emerging Technologies principles, an AWS licensee would not be required to pay incumbents for internal resources devoted to the relocation process or for fees that cannot be legitimately tied to the provision of comparable facilities, because such expenses are difficult to determine and verify. Finally, the Commission sought comment on whether to apply a "right of return" policy to AWS/BRS relocation negotiations similar to rule 47 CFR 101.75(d) (*i.e.*, if after a 12 month trial period, the new facilities prove not to be comparable to the old facilities, the BRS licensee could return to the old frequency band or otherwise be relocated or reimbursed).

19. Based on its review of the record, the Commission will continue to generally follow our Emerging Technologies policies for negotiations and adopt our proposal to forego a voluntary negotiation period and establish "rolling" mandatory negotiation periods (*i.e.*, separate, individually triggered negotiation periods for each BRS licensee) of three years followed by an involuntary relocation period during which the AWS entrant may involuntarily relocate the BRS incumbents. During mandatory negotiations, the parties are afforded flexibility in the process except that an incumbent licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Each mandatory negotiation period would be triggered for each BRS licensee when an AWS licensee informs the BRS licensee in writing of its desire to negotiate. The new 2.5 GHz band where the BRS incumbents are to be relocated is undergoing its own transition process that may not be completed for several years. Thus, we will allow the BRS licensees to suspend the running of the three year negotiation period for up to one year if the BRS licensee cannot be relocated to comparable facilities at the time the AWS licensee seeks entry into the incumbent's GSA, *i.e.*, if the BRS licensee's spectrum in the 2.5 GHz band is not yet available because of the 2.5 GHz band transition. If no agreement is reached during negotiations, an AWS licensee may proceed to involuntary relocation of the incumbent. During involuntary relocation, the new AWS licensee must guarantee payment of all relocation expenses necessary to provide comparable replacement facilities. Consistent with the Emerging Technologies principles, an AWS licensee would not be required to pay incumbents for internal resources devoted to the relocation process or for fees that cannot be legitimately tied to the provision of comparable facilities, because such expenses are difficult to determine and verify. In addition, an AWS entrant must ensure that the BRS incumbent's spectrum in the 2.5 GHz band is available for the market at issue (or an alternate location, *e.g.*, a temporary location in the 2.5 GHz band, for the provision of comparable facilities) prior to relocating that incumbent. This approach is generally consistent with Emerging Technologies procedures for involuntary relocation, except that, because AWS entrants and BRS incumbents are potential competitors, we must include special provisions to protect the BRS licensees' legitimate commercial interests. Accordingly, BRS incumbents cannot be required to disclose subscriber location information so that AWS licensees would be able to construct, test, and deliver replacement facilities to the incumbent and will have to take a much more active role in the deployment of comparable facilities in an involuntary relocation than has typically been the case under previous applications of the Emerging Technologies policies. In order to ensure that all parties are acting in good faith while simultaneously protecting BRS licensees' legitimate commercial interests, we will permit AWS licensees to request that the BRS incumbent verify the accuracy of its subscriber counts by, for example, requesting a one-to-one return or exchange of existing end user equipment.

20. Finally, the Commission finds that a "right of return" policy is appropriate. The "right of return" policy will apply to AWS/BRS involuntary relocations only—if one year after relocation, the new facilities prove not to be comparable to the old facilities, the AWS licensee must remedy the defects by reimbursement or pay to relocate the BRS licensee to its former frequency band or other comparable facility (until the sunset date).

21. *Sunset Date.* In the *AWS Fifth Notice*, the Commission proposed to apply the sunset rule of 47 CFR 101.79 to BRS relocation negotiations. This sunset rule provides that new licensees are not required to pay relocation expenses after ten years following the

start of the negotiation period for relocation. The Commission also proposed that the ten year sunset date commence from the date the first AWS license is issued in the 2150–2160 MHz band. The Commission disagrees with commenters who argue that no sunset date should be applied or that a relocation deadline of either ten or fifteen years is more appropriate. Because the Emerging Technologies principles are intended to allow new licensees early entry into the band and are not designed as open-ended mechanisms for providing relocation compensation to displaced incumbents, it would be inconsistent with those principles to eliminate the sunset date. We continue to believe that the sunset date is a vital component of the Emerging Technologies relocation principles because it provides a measure of certainty for new technology licensees, while giving incumbents time to prepare for the eventuality of moving to another frequency band. Further, the unique circumstances, *i.e.*, reconfiguring and transitioning the 800 MHz band to alleviate unacceptable interference to public safety operations in the band, that required setting a relocation deadline for clearing incumbent operations in the 800 MHz proceeding are not present here. However, as noted above, we recognize that the 2.5 GHz band, where the BRS incumbents are to be relocated, is undergoing its own transition process and that relocation of existing 2.5 GHz operations may not be completed for several years. Also, because portions of the spectrum in the 2150–2160/62 MHz band will be made available for AWS auction at different times, *i.e.*, spectrum now occupied by part of BRS channel 1 (2150–2155 MHz) will be licensed in an upcoming auction of the 2110–2155 MHz band, while spectrum occupied by BRS channels 2 and 2A and the upper one megahertz of BRS channel 1 (2155–2160/62 MHz) will be licensed at a later date, the entry of AWS licensees into the entire band will occur at different times. To account for these unique circumstances, we believe that additional time before the AWS entrant's relocation obligation ends may be warranted. We therefore adopt a single sunset date of fifteen years, commencing from the date the first AWS license is issued in the 2150–2160 MHz band, after which new AWS licensees are not required to pay for BRS relocation expenses.

22. *Good Faith Requirement.* The Commission expects the parties involved in the replacement of BRS equipment to negotiate in good faith, that is, each party will be required to provide information to the other that is reasonably necessary to facilitate the relocation process. Among the factors relevant to a good-faith determination are: (1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities; (2) the steps the parties have taken to determine the actual cost of relocation to comparable facilities; and (3) whether either party has unreasonably withheld information essential to the accurate estimation of relocation costs and procedures requested by the other party. The record generally supports a good faith requirement and we therefore adopt our proposal to apply the good faith guidelines of 47 CFR 101.73 to BRS negotiations. In addition, we note that our cost-sharing rules require the AWS relocator to obtain a third party appraisal of relocation costs, which, in turn, would require the appraiser to have access to the BRS incumbent's system prior to relocation. Accordingly, we will require that a BRS incumbent cooperate with an AWS licensee's request to provide access to the facilities to be relocated, other than subscribers' end user equipment, so that an independent third party can examine the system and prepare an appraisal of the costs to relocate the incumbent to comparable facilities.

3. Interference Issues/Technical Standards

23. Under § 24.237 of the Commission's rules, PCS licensees operating in the 1850–1990 MHz band and AWS licensees operating in the 2110–2155 MHz band must, prior to commencing operations, perform certain engineering analyses to ensure that their proposed operations do not cause interference to incumbent fixed microwave services. Part of that evaluation calls for the use of Telecommunications Industry Association Telecommunications Systems Bulletin 10–F (TIA TSB 10–F) or its successor standard. In the *AWS Fifth Notice*, the Commission sought comment on whether a rule comparable to § 24.237 in the Commission's rules should be developed that could be used to determine whether proposed AWS operations would cause interference to incumbent BRS systems operating in the 2150–2160 MHz band and, if so, what procedures and mechanisms such a rule should contain. As an initial matter, the Commission concludes that relocation zones are appropriate for assessing the interference potential between new co-channel AWS entrants' operations and existing BRS facilities. In addition to being supported by many commenters, the line-of-sight approach embodied in the relocation zone approach will draw on the established methodology that was formerly set out in Part 21 of our Rules, as well as previous Commission decisions regarding the BRS and EBS, and will provide an easy-to-implement calculation that will afford new AWS entrants some certainty in planning new systems. To the extent that a relocation zone may require an AWS entrant to relocate some BRS systems that would not receive actual harmful interference, we agree with those commenters who assert that the administrative ease realized by implementing the relocation zone's "bright-line test" will serve to promote the rapid deployment of new AWS operations by eliminating complex and time consuming site-based analyses, and outweighs any disadvantages associated with any over inclusiveness.

24. To determine whether a proposed AWS base station will have line of sight to a BRS receive station hub, the Commission is requiring AWS entrants that propose to implement co-channel operations in the BRS band (*i.e.*, AWS licensees using the upper five megahertz of channel block F—or the 2150–2155 MHz portion of the 2145–2155 MHz block, or the 2155–2162 MHz portion of the 2155–2175 MHz band) to use the methodology the Commission developed for licensees to employ when conducting interference studies from and to two-way MDS/ITFS systems. Where the AWS entrant has determined that its station falls within the relocation zone under this methodology, then the AWS entrant must first relocate the co-channel BRS system that consists of that hub and associated subscribers before the AWS entrant may begin operation. In the particular case of an incumbent BRS licensee that uses channel(s) 1 and/or 2/2A for the delivery of video programming to subscribers, we recognize that the relocation zone approach will need to operate in a slightly different manner because potential interference from the AWS licensee would occur at the subscriber's location instead of at a BRS receive station hub. In order to provide interference protection to subscribers in a manner that does not require disclosure of sensitive customer data, and to recognize that these BRS licensees may add subscribers anywhere within their licensed GSA, the most appropriate method to ascertain whether interference could occur to BRS systems providing one-way video delivery in channels 1 and/or 2/2A is to determine whether the AWS base

station has line of sight to a co-channel BRS incumbent's GSA. To make this determination, we will require co-channel AWS entrants to use the methodology that was formerly codified in 47 CFR 21.902(f)(5) (2004) of the Commission's rules.

25. Although the relocation zone approach is well suited for new entrants that propose to implement co-channel operations in the BRS band, the Commission concludes that simply using a line-of-sight methodology for determining the relocation obligations of adjacent channel (*e.g.*, AWS licensees using the lower five megahertz of channel block F—or the 2145–2150 MHz portion of the 2145–2155 MHz block) and non-adjacent channel AWS licensees (*e.g.*, AWS licensees using channel blocks A–E, from 2110–2145 MHz), is not appropriate. In this situation, such AWS operations will not pose a large enough potential for interference to BRS incumbent licensees to warrant an automatic relocation obligation without first determining whether harmful interference to BRS will actually occur. We specifically reject the contention that any AWS base station in the 2.1 GHz band that proposes to operate within line of sight of a centralized BRS channel 1 and/or 2/2A receive station hub will always interfere with the BRS receive station hub and likewise do not believe that the potential for AWS intermodulation (*i.e.* interference caused when multiple signals from different frequency bands combine to create harmful interference in a particular frequency band—the band in which BRS operations are located, in this instance) or AWS cross-modulation (interference caused by the modulation of the carrier of a desired signal by an undesired signal) is so severe that either situation warrants special treatment. Accordingly, a line-of-sight test for AWS entrants operating outside the 2150–2160/62 MHz band would be much more over inclusive than the application of such a test to in-band operations, and we do not implement a relocation zone for AWS entrants in the 2110–2150 MHz band or in the 2160/62–2175 MHz band, as applicable. We emphasize, however, that if any AWS system—regardless of where within the 2110–2175 MHz band—causes actual and demonstrable interference to a BRS system, then the AWS licensee is responsible for taking the necessary steps to eliminate the harmful interference, up to and including relocation of the BRS licensee.

B. Relocation of FS in the 2160–2175 MHz Band

26. In the *AWS Fifth Notice*, the Commission discussed how our *Emerging Technologies* relocation principles have been applied to past relocation decisions for AWS bands, and sought comment on the appropriate relocation procedures to adopt for FS incumbents in the 2160–2175 MHz band. In the *AWS Second Report and Order* in ET Docket 00–258 (*"AWS Second R&O"*), 66 FR 47618, September 13, 2001, the Commission applied a modified version of these Emerging Technologies relocation procedures to the 2110–2150 MHz band. Under these procedures, the Commission eliminated the voluntary negotiation period for relocation of FS incumbents by MSS in the 2165–2200 MHz band. In addition, the Commission decided that a single mandatory negotiation period for the band would be triggered when the first MSS licensee informs, in writing, the first FS incumbent of its desire to negotiate. More recently, in the *AWS Sixth Report and Order* in ET Docket 00–258, 69 FR 62615, October 27, 2004, the Commission concluded that, consistent with its decision in the *AWS Second R&O,* it would be appropriate to apply the same procedures to the relocation of FS by AWS licensees in the 2175–2180 MHz paired band.

27. The Commission's relocation policies were first adopted to promote the rapid introduction of new technologies into bands hosting incumbent FS licensees. Thus, we continue to believe, as a general matter, that the Emerging Technologies relocation procedures are particularly well suited for this band. The Commission's review of the historic and current applications of our relocation procedures leads us to adopt the following: we will forgo the voluntary negotiation period and instead adopt a mandatory negotiation period to be followed by the right of the AWS licensee to trigger involuntary relocation procedures. We also adopt, as proposed, a ten-year sunset period for the 2160–2175 MHz band that will be triggered when the first AWS licensee is issued in the band. The sunset date is vital for establishing a date certain by which incumbent operations become secondary in the band, and the date the first license is issued will be both easy to determine and well known among licensees and incumbents in the band.

28. The Commission also adopts "rolling" negotiation periods, as proposed in the *AWS Fifth Notice.* Under this approach, a mandatory negotiation period will be triggered when an AWS licensee informs a FS licensee, in writing, of its desire to negotiate for the relocation of a specific FS facility. The result will be a series of independent mandatory negotiation periods, each specific to individual incumbent FS facilities. We conclude that this approach best serves both incumbent licensees and new AWS entrants, and is consistent with the process that was successfully employed for the relocation of FS incumbents by PCS entrants. Because, under this approach, a mandatory negotiation period could be triggered such that it would still be in effect at the sunset date, we further clarify that the sunset date shall supersede and terminate any remaining mandatory negotiation period that had not been triggered or had not yet run its course. We similarly modify our relocation procedures for the 2110–2150 MHz and 2175–2180 MHz bands to establish individually triggered mandatory negotiation periods and to modify the sunset date to be ten years after the first AWS license is issued in each band, because doing so promotes harmonization of FS relocation procedures among the various AWS designated bands.

29. The Commission adopts its proposal to apply the most current *Emerging Technologies* relocation procedures to part 22 licensees, and will modify part 22 to align the relocation procedures in part 101 to the AWS relocation of part 22 FS licensees in the 2110–2130 MHz and 2160–2180 MHz bands. All FS licenses operating in reallocated bands, regardless of whether they are licensed under part 22 or part 101, will remain subject to the applicable relocation procedures in effect for the band, including the sunset date at which existing operations become secondary to new entrants. We also note that, pursuant to § 553(b)(B) of the Administrative Procedure Act, we are amending our relocation rules for FS licensees to delete references to outdated requirements. The decision to set forth the appropriate relocation procedures that new AWS entrants will follow when relocating FS incumbents in the 2160–2175 MHz band does not substitute for the establishment of service rules for the band (or a larger spectrum block that encompasses this band). We continue to anticipate the issuance of a separate Notice of Proposed Rulemaking that will examine specific licensing and service rules that will be applicable to new AWS entrants in the band.

C. Cost Sharing

30. In 1996, the Commission adopted a plan to allocate cost-sharing

obligations stemming from the relocation of incumbent FS facilities then operating in the 1850–1990 MHz band (1.9 GHz band) by new broadband PCS licensees. This cost-sharing regime created a process by which PCS entities that incurred costs for relocating microwave links could receive reimbursement for a portion of those costs from other PCS entities that also benefit from the spectrum clearance. In a series of decisions in WT Docket 95–157 (collectively, the "*Microwave Cost Sharing* proceeding"), the Commission stated that the adoption of a cost-sharing regime serves the public interest because it (1) Distributes relocation costs more equitably among the beneficiaries of the relocation; (2) encourages the simultaneous relocation of multi-link communications systems; and (3) accelerates the relocation process, promoting more rapid deployment of new services.

1. Relocation of Incumbent FS Licensees in the 2110–2150 MHz and 2160–2200 MHz Bands

31. Currently, FS incumbents operate microwave links in the 2110–2150 MHz and 2160–2200 MHz bands, mostly composed of paired channels in the lower and upper bands (*i.e.*, 2110–2130 MHz with 2160–2180 MHz and 2130–2150 MHz with 2180–2200 MHz). Section 101.82 of the Commission's part 101 relocation rules provides that when a new licensee in either of these bands relocates an incumbent paired FS link with one path in the 2110–2150 MHz band and the paired path in the 2160–2200 MHz band, the new licensee is entitled to reimbursement of fifty percent of its relocation costs from any subsequently entering new licensee which would have been required to relocate the same FS link, subject to a monetary "cap." The AWS Fifth NPRM explained that this rule applied to both new AWS licensees in the 2110–2150 MHz and 2160–2180 MHz bands, as well as to MSS licensees in the 2180–2200 MHz band.

a. Cost Sharing Between AWS Licensees

32. In the *Notice of Proposed Rulemaking* in WT Docket No. 04–356 ("*AWS–2 Service Rules NPRM*"), 69 FR 63489, November 2, 2004, the Commission sought comment on whether it should adopt formal procedures for apportioning relocation costs among multiple AWS licensees in the 2110–2150 MHz and 2175–2180 MHz bands and, in particular, whether it should apply the cost-sharing rules in Part 24 that were used by new PCS licensees when they relocated incumbent FS links in the 1850–1990 MHz band. In the *AWS Fifth NPRM*, the Commission sought comment on the same issues in the 2160–2175 MHz band and whether AWS licensees in the 2160–2175 MHz band should be subject to the same cost-sharing regime as it adopts to govern the relocation of FS incumbents in the 2110–2150 MHz and 2175–2180 MHz bands. Under the part 24 cost-sharing plan, new entrants that incurred costs relocating an FS link were eligible to receive reimbursement from other entrants that also benefited from that relocation. Relocators could submit their reimbursement claims to one of the private not-for-profit clearinghouses designated by the Wireless Telecommunications Bureau ("WTB") to administer the plan. Specifically, new entrants filing a prior coordination notice (PCN) were also required to submit their PCN to the clearinghouse(s) before beginning operations. After receiving the PCN, a clearinghouse with a reimbursement claim on file determined whether the new entrant benefited from the relevant relocation using a Proximity Threshold Test. Under the Proximity Threshold Test, a new entrant triggered cost-sharing obligations for a microwave link if all or part of the microwave link was initially co-channel with the PCS band(s) of any PCS entrant, a PCS relocator had paid to relocate the link, and the new PCS entrant was prepared to start operating a base station within a specified geographic distance of the relocated link. The clearinghouse then used the cost-sharing formula specified in § 24.243 of the Commission's Rules to calculate the amount of the beneficiary's reimbursement obligation. This amount was subject to a cap of $250,000 per relocated link, plus $150,000 if a new or modified tower was required. The beneficiary was required to pay reimbursement within 30 days of notification, with an equal share of the total going to each entrant that previously contributed to the relocation. Payment obligations and reimbursement rights under the part 24 cost-sharing plan can be superseded by a privately negotiated cost-sharing arrangement between licensees. Disputes over cost-sharing obligations under the rules were addressed, in the first instance, by the clearinghouse. If the clearinghouse was unable to resolve the dispute, parties were encouraged to pursue alternative dispute resolution (ADR) alternatives such as binding arbitration.

33. Based on the record, the Commission concludes that it will apply the part 24 cost-sharing rules, as modified, to the relocation of FS incumbents by AWS entrants in the 2.1 GHz band. Doing so will accelerate the relocation process and promote rapid deployment of new advanced wireless services in the 2.1 GHz band. Adoption of the part 24 cost-sharing rules, with minor modifications, serves the public interest because it will distribute relocation costs more equitably among the beneficiaries of the relocation, encourage the simultaneous relocation of multi-link communications systems, and accelerate the relocation process, thereby promoting more rapid deployment of new services. We also incorporate the part 24 cost-sharing provisions for voluntary self-relocating FS incumbents to obtain reimbursement from those AWS licensees benefiting from the self-relocation. Incumbent participation will provide FS incumbents in the 2.1 GHz band with the flexibility to relocate themselves and the right to obtain reimbursement of their relocation costs, adjusted by depreciation, up to the reimbursement cap, from new AWS entrants in the band. We also find that incumbent participation will accelerate the relocation process by promoting system wide relocations and result in faster clearing of the 2.1 GHz band, thereby expediting the deployment of new advanced wireless services to the public. Therefore, we require AWS licensees in the 2.1 GHz band to reimburse FS incumbents that voluntarily self-relocate from the 2110–2150 MHz and 2160–2200 MHz bands and AWS licensees will be entitled to *pro rata* cost sharing from other AWS licensees that also benefited from the self-relocation. Accordingly, subject to the clarifications and modifications explained below, we adopt rules based on the formal cost-sharing procedures codified in part 24 of our rules to apportion relocation costs among AWS licensees in the 2110–2150 MHz, 2160–2175 MHz, and 2175–2180 MHz bands.

34. The Commission finds that the record in this proceeding warrants certain modifications to the part 24 cost-sharing plan to help distribute cost-sharing obligations equitably among the beneficiaries of the relocation and also encourage and accelerate the relocation process. For FS incumbents that elect to self-relocate their paired channels in the 2130–2150 MHz and 2180–2200 MHz bands (with AWS in the lower band and MSS in the upper band), we will impose cost-sharing obligations on AWS licensees but not on MSS operators. Where a voluntarily relocating microwave incumbent relocates a paired microwave link with paths in the 2130–2150 MHz and 2180–2200 MHz bands, it is entitled to partial reimbursement

from the first AWS beneficiary, equal to fifty percent of its actual costs for relocating the paired link, or half of the reimbursement cap, whichever is less. This amount is subject to depreciation. For purposes of applying the cost-sharing formula relative to other AWS licensees that benefit from the self-relocation, the fifty percent attributable to the AWS entrant shall be treated as the entire cost of the link relocation, and depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent.

35. The Commission declines to adopt commenters' suggestion that we eliminate in its entirety the Part 24 requirement that a relocator or self-relocating microwave incumbent file documentation of its relocation agreement or discontinuance of service to the clearinghouse. We do require AWS relocators in the 2.1 GHz band to file their reimbursement requests with the clearinghouse within 30 calendar days of the date the relocator signs a relocation agreement with an incumbent. Consistent with the Part 24 approach of imposing the same obligations on self-relocators seeking reimbursement that apply to relocators, we will also require self-relocating microwave incumbents in the 2.1 GHz band to file their reimbursement requests with the clearinghouse within 30 calendar days of the date that they submit their notice of service discontinuance with the Commission.

36. All AWS licensees in the 2.1 GHz band that are constructing a new site or modifying an existing site will have to file site-specific data with the clearinghouse prior to initiating operations for a new or modified site. The site data must provide a detailed description of the proposed site's spectral frequency use and geographic location. Those entities will have a continuing duty to maintain the accuracy of the data on file with the clearinghouse. Utilizing the site-specific data submitted by AWS licensees, the clearinghouse determines the cost-sharing obligations of each AWS entrant by applying the Proximity Threshold Test. We find that the presence of an AWS entrant's site within the Proximity Threshold Box, regardless of whether it predates or postdates relocation of the incumbent, and regardless of the potential for actual interference, will trigger a cost-sharing obligation. Accordingly, any AWS entrant that engineers around the FS incumbent will trigger a cost-sharing obligation once relocation of the FS incumbent occurs. The Proximity Threshold Test is a bright-line test that does not require extensive engineering studies or analyses, and it yields consistent, predictable results by eliminating the variations—and thus disputes—which can be associated with the use of interference standards such as the TIA TSB 10–F. The use of such a bright-line test in this context will expedite the relocation process by facilitating cost-sharing, minimizing the possibility of disputes that may arise through the use of other standards or tests, and encouraging new entrants to relocate incumbent licensees in the first instance.

37. The Commission adopts a rule that precludes entrants that have triggered a cost-sharing obligation, pursuant to the rules adopted herein, from avoiding that obligation by deconstructing or modifying their facilities. We find that such a policy will promote the goals of this proceeding and encourage the relocation of incumbents. We do not find, however, that the record in this proceeding demonstrates a need to specifically incorporate the phrase "one trigger—one license" into the triggering language of § 24.243 of the Commission's Rules. The rule already explicitly states that the *pro rata* reimbursement formula is based on the number of entities that would have interfered with the link and we do not find that further clarification is required.

38. Consistent with precedent, the Commission establishes that the cost-sharing plans will sunset on the date on which the relocation obligation for the subject band terminates. The sunset dates for the 2110–2150 MHz, 2160–2175 MHz, 2175–2180 MHz bands may vary among the bands, but by establishing sunset dates for cost sharing purposes that are commensurate with the sunset date for AWS relocation obligations in each band, the Commission appropriately balances the interests of all affected parties and ensures the equitable distribution of costs among those entrants benefiting from the relocations. AWS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

39. Under part 24, WTB has delegated authority to assign the administration of the cost-sharing rules to one or more private not-for-profit clearinghouses. As the Commission noted in the *AWS Fifth NPRM*, management of the part 24 cost-sharing rules by third-party clearinghouses has been highly successful. The Commission therefore adopts the part 24 clearinghouse rules and delegates to WTB the authority to select one or more entities to create and administer a neutral, not-for-profit clearinghouse to administer the cost-sharing plan for the FS incumbents in the 2.1 GHz band. The selection criteria will be established by WTB. WTB shall issue a Public Notice announcing the criteria and soliciting proposals from qualified parties. Once WTB is in receipt of such proposals, and the opportunity for public comment on such proposals has elapsed, WTB will make its selection. When WTB designates an administrator for the cost-sharing plan, it shall announce the effective date of the cost-sharing rules. We decline TMI/TerreStar's suggestion to delegate the task of selecting a clearinghouse(s) jointly to WTB and the International Bureau. Our clearinghouse decisions today will impose mandatory requirements only on terrestrial operations and we believe that delegating authority to one bureau will promote consistency and uniformity.

40. The Commission continues to require participants in the cost-sharing plan to submit their disputes to the clearinghouse for resolution in the first instance. Where parties are unable to resolve their issues before the clearinghouse, parties are encouraged to use expedited ADR procedures, such as binding arbitration, mediation, or other ADR techniques. We decline, however, to institute the procedures suggested by some commenting parties that would permit the clearinghouse to refer requests for declaratory rulings and policy interpretations to the Commission for expedited consideration because we are not convinced that a special procedure is warranted. We do, however, agree with PCIA and T-Mobile that a clearinghouse should not be required to maintain all documentary evidence. Except for the independent third party appraisal of the compensable relocation costs for a voluntarily relocating microwave incumbent and documentation of the relocation agreement or discontinuance of service required for a relocator or self-relocator's reimbursement claim, both of which must be submitted in their entirety, we will require participants in the cost-sharing plan to only provide the uniform cost data requested by the clearinghouse subject to the continuing requirements that relocators and self-relocators maintain documentation of cost-related issues until the sunset date and provide such documentation, upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. In addition, we will also require that parties of interest contesting the clearinghouse's

determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse. New entrants and incumbent licensees are expected to act in good faith in all matters relating to the cost-sharing process herein established. The Commission declines to adopt a definition of what constitutes "good faith" in the context of cost sharing. We find that the question of whether a particular party was acting in good faith is best addressed on a case-by-case basis.

b. Cost Sharing Triggers and Clearinghouse for AWS, MSS/ATC

41. Mobile-Satellite Service (MSS) is allocated to the 2180–2200 MHz band. FS links in this band are paired with FS links in the 2130–2150 MHz band, which is designated for AWS. Cost sharing between MSS and AWS licensees in these paired bands is governed by section 101.82. This rule provides that when a new licensee in either of these bands relocates an incumbent paired FS link with one path in one band and the paired path in the other band, the new licensee is entitled to reimbursement of fifty percent of its relocation costs (*i.e.*, the total cost of relocating both paths) subject to a monetary "cap," from any subsequently entering new licensee that would have been required to relocate the same FS link. The Commission adopted relocation rules for MSS that recognize the unique characteristics of a satellite service. For example, unlike a new terrestrial entrant such as AWS that can clear the band on a link-by-link basis, MSS (space-to-Earth) must clear all incumbent FS operations in the 2180–2200 MHz band within the satellite service area if interference will occur. Thus, the relocation obligations and cost sharing among MSS new entrants in the 2180–2200 MHz are relatively straightforward and can function without a clearinghouse or formal cost-sharing procedures.

42. In the *AWS Fifth NPRM*, the Commission noted that § 101.82 establishes a cost-sharing obligation between MSS and AWS that is reasonable and relatively easy to implement, and because it does not depreciate cost-sharing obligations, it provides MSS licensees with additional assurance of cost recovery. Furthermore, the Commission stated that it did not wish to change the relocation and cost-sharing rules applicable to MSS, because MSS licensees are currently in the midst of the implementation and relocation process. The Commission also sought comment on whether MSS entrants entitled to reimbursement under Section 101.82 should submit their reimbursement claims to an AWS clearinghouse, including any procedures adopted for filing such claims. The Commission believed that this approach would relieve MSS licensees of the burden of identifying the AWS licensees who would be obligated to pay relocation costs, and sought comment on this proposal.

43. Based on the record before us, the Commission concludes that MSS operators will have different cost-sharing obligations for microwave links that are relocated for space-to-Earth downlink operations than for microwave links that are relocated for MSS ATC operations. As noted above, we had previously adopted rules (*see* Section 101.82) for MSS cost sharing based on an interference criteria (TIA Technical Services Bulletin 86 (TIA TSB 86)), and the *AWS Fifth NPRM* did not propose to change these relocation and cost-sharing obligations because the MSS operators were already in the midst of implementing these processes. The *AWS Fifth NPRM* did, however, seek comment on whether MSS operators should use a clearinghouse for cost sharing. The relocation and cost-sharing obligations triggered by space-to-Earth links is relatively straightforward to implement because the MSS operator will relocate all incumbent microwave operations within the satellite service area before it begins operations if interference will occur. The MSS operator and the AWS licensees can therefore easily identify the parties with whom they will share costs. We thus conclude here that we will not require MSS operators to use a clearinghouse for microwave links relocated for space-to-Earth downlinks and we will continue to apply the relocation and cost-sharing obligations provided in § 101.82 to MSS operators that relocate microwave links for space-to-Earth downlink operations. We further conclude that MSS operators that relocate microwave links for space-to-Earth downlink operations should have the right, but not the obligation, to submit their claims for reimbursement (from AWS licensees) to the AWS clearinghouse pursuant to the procedures we adopted. We clarify that if an MSS operator submits a claim to the clearinghouse, the interference criteria for determining cost-sharing obligations for an MSS space-to-Earth downlink is TIA TSB 86.

44. The Commission finds that, since § 101.82 is silent as to reimbursement for microwave links relocated for ATC base stations, it is appropriate to adopt a specific rule for ATC reimbursement for relocated terrestrial microwave facilities. Based on the record before us, we conclude that MSS operators that relocate microwave links for ATC operations will be required to use a clearinghouse for cost sharing and thus will have the same cost-sharing obligations as AWS entrants. ATC operations will trigger incumbent microwave relocations on a link-by-link basis in the same way as AWS operations. The Commission previously determined that cost sharing would be determined using the relevant interference modeling and that TIA TSB 10–F, or its successor standard, is an appropriate standard for purposes of triggering relocation obligations by new terrestrial (ATC or AWS) entrants in the 2 GHz band. The Commission also noted that procedures other than TIA TSB 10–F that follow generally acceptable good engineering practices are also acceptable. We conclude that the Proximity Threshold Test is an acceptable alternative to TIA TSB 10–F to determine interference for purposes of AWS-to-ATC and ATC-to-AWS cost sharing, and we adopt its use here as well.

45. Furthermore, the Commission has specifically concluded that MSS terrestrial operations are technically similar to PCS and that TIA TSB 10–F is a relevant standard for determining whether a new ATC base station must relocate an incumbent microwave operation. Given that the Proximity Threshold Test used for PCS, and now AWS cost-sharing obligations, is an acceptable alternative to TIA TSB 10–F to determine interference for purposes of cost sharing, we find it reasonable to also use this test for triggering ATC to AWS cost-sharing obligations. Under this approach, reimbursement is only triggered if all or part of the relocated microwave link was initially co-channel with the licensed band(s) of the AWS or ATC operator. The Proximity Threshold Test will be easier to administer than TIA TSB 10–F and does not require extensive engineering studies or analyses, and it yields consistent, predictable results by eliminating the variations which can be associated with the use of TIA TSB 10–F.

46. Given that AWS and ATC are terrestrial operations, the Commission agrees that MSS participation in the clearinghouse process should be

mandatory for ATC operations so that the clearinghouse can accurately track cost-sharing obligations as they relate to all terrestrial operations. Thus, MSS operators must file notices of operation with the clearinghouse for all ATC base stations following the same rules and procedures that that will govern all AWS base stations. On the other hand, we find that the record before us provides no technical basis for adopting PCIA's proposal that, when MSS initiates space-to-Earth operations, cost sharing should be triggered nationwide automatically (rather than based on an interference analysis) for all previously relocated co-channel links. Moreover, the Commission previously concluded that TIA TSB 86 is the appropriate standard for purposes of triggering both relocation and cost-sharing obligations of new MSS downlink (space-to-Earth) operations.

47. Under § 101.79, MSS is not required to pay relocation costs after the relocation rules sunset, *i.e.*, ten years after the mandatory negotiation period began for MSS/ATC licensees in this service. For MSS/ATC, the relocation sunset date will be December 8, 2013. Under part 101, new cost-sharing obligations under § 101.82 sunset along with the relocation sunset. Nonetheless, TMI/TerreStar's concern that any clearinghouse-based reimbursement option should be available until at least December 31, 2014, appears to be satisfied because, the AWS cost-sharing obligation sunset will not occur until after 2015.

48. The Commission declines the suggestion to impose an obligation on MSS to share costs with self-relocating FS incumbents because the proposal is beyond the scope of the *AWS Fifth NPRM*. Similarly, we decline the suggestion to adopt part 24 depreciation for AWS/MSS cost sharing both because it beyond the scope of the *AWS Fifth NPRM* and because the Commission concluded in 2000 that the part 24 amortization formula, whereby the amount of reimbursement owed by later entrants diminishes over time, is irrelevant to AWS/MSS cost sharing. The record before us presents no basis for reversing this earlier conclusion. Thus, as noted in the *AWS Fifth NPRM*, the part 24 plan formula, *e.g.*, depreciation, will not govern reimbursement due to an MSS licensee who requests reimbursement from an MSS or AWS licensee, or to reimbursement due to an AWS licensee who requests reimbursement from an MSS licensee under § 101.82. If an AWS licensee reimburses an MSS licensee under § 101.82, this sum shall be treated as the entire actual cost of the link relocation for purposes of applying the cost-sharing formula relative to other AWS licensees that benefit. In such instances, the AWS licensee must register the link with a clearinghouse within 30 calendar days of making the payment to the MSS operator. The suggestion to require MSS/ATC to coordinate with FS incumbents is similarly beyond the scope of the *AWS Fifth NPRM*, which focused on whether MSS should participate in the terrestrial clearinghouse. The *AWS Fifth NPRM* expressly declined to revisit the MSS relocation and cost-sharing matters decided between 2000 and 2003 and directly stated that new MSS licensees would continue to follow the cost-sharing approach set forth in § 101.82. Comsearch's point that it is no longer a certainty that MSS will begin operations before AWS is well taken. Nonetheless, as noted in the *AWS Fifth NPRM*, the relocation process adopted for MSS is already underway. In this connection, we note that the mandatory negotiation period for non-public safety and public safety incumbents ended on December 8, 2004, and December 8, 2005, respectively. Therefore, because these additional suggestions are beyond the scope of the *AWS Fifth NPRM* and address issues already decided in prior Commission decisions, we decline to adopt these requests.

2. Relocation of Incumbent BRS Licensees in the 2150–2160/62 MHz Band

49. In the *AWS Fifth NPRM*, the Commission stated that there may be instances where an AWS entrant relocates more BRS facilities than an interference analysis would indicate was technically necessary. The Commission noted, for example, that an AWS entrant might be required to relocate facilities outside its own service area to comply with the comparable facilities requirement. In that event, a subsequent co-channel AWS entrant in an adjacent geographic area might also benefit from the relocation. The Commission noted, in addition, that the relocation of a single BRS facility might benefit more than one AWS entrant. The Commission therefore sought comment on whether it should require AWS licensees who benefit from an earlier AWS licensee's relocation of a BRS incumbent in the 2150–2160/62 MHz band to share in the cost of that relocation. In particular, the Commission sought comment on what criteria could be used to identify whether a subsequent AWS licensee has an obligation to share the cost of relocating a BRS incumbent and how costs should be apportioned among new entrants. The Commission further sought comment on whether cost-sharing obligations should be subject to a specific cap, whether it should adopt formal cost-sharing procedures such as the part 24 cost-sharing plan, and whether a clearinghouse should be assigned to administer the process.

50. The Commission finds that cost sharing will provide for a more equitable relocation process by spreading the costs of the relocation among the AWS licensees that benefit. In addition, cost sharing should accelerate the relocation process by encouraging new entrants to relocate systems themselves rather than wait for another entrant to do so. We therefore conclude that we should establish cost-sharing obligations for AWS licensees that benefit from another AWS licensee's relocation of a BRS incumbent from the 2150–2160/62 MHz band. We further conclude that the part 24 cost-sharing rules provide an appropriate framework for BRS relocation cost sharing. The part 24 cost-sharing rules and procedures have proven effective in sharing the costs of FS relocation. Admittedly, as the Commission noted in the *AWS Fifth NPRM*, applying the PCS cost-sharing regime to BRS will require significant changes to account for the differences between BRS services and fixed point-to-point services. We find, however, that in most respects, the PCS cost-sharing regime can be applied to BRS. We further find that the PCS cost-sharing system provides the best balance of competing concerns, such as precision and ease of administration. Adopting a regime based on the PCS cost-sharing rules will also benefit AWS licensees to the extent that they already have a familiarity with the system. In addition, we anticipate, that an administrator of the cost-sharing system can achieve efficiencies by jointly administering BRS cost sharing with the very similar regime we have established for relocation of FS incumbents. Therefore our implementation of a BRS cost-sharing regime is guided generally by the PCS cost-sharing rules and departs from those rules only where a different approach is justified.

51. *Clearinghouse.* The Commission agrees with those commenters who recommend using a clearinghouse to administer any cost-sharing rules the Commission may adopt in the relocation of BRS incumbents from the 2150–2160/62 MHz band. We therefore delegate to WTB the authority to select one or more entities to create and administer a neutral, not-for-profit clearinghouse. Selection shall be based on criteria established by WTB. WTB shall publicly

announce the criteria and solicit proposals from qualified parties. Once such proposals have been received, and an opportunity has elapsed for public comment on them, WTB shall make its selection. When WTB selects an administrator, it shall announce the effective date of the cost-sharing rules.

52. *Triggering a Reimbursement Obligation.* The Commission establishes the following rules for identifying when an AWS licensee entering a market triggers a cost-sharing obligation in connection with the prior relocation of a BRS system in the 2150–2160/62 MHz band. First, we limit cost-sharing obligations to those AWS entrants licensed in spectrum that is co-channel, at least in part, with the bands previously used by the relocated BRS system (*i.e.*, those AWS entrants who operate using licenses that overlap with the 2150–2160/62 MHz band). We note that the Commission similarly limited the PCS cost-sharing obligations to new entrants that would have caused co-channel interference to the incumbent, and we agree with U.S. Cellular that excluding other AWS channels [non-co-channel] for cost sharing purposes "greatly simplifies the cost-sharing plan and eliminates many possible disagreements over whether an AWS system would have caused or experienced adjacent channel interference."

53. When an AWS entrant turns on a fixed base station using a license that overlaps spectrum in the 2150–2160/62 MHz band previously used by a relocated BRS system, a cost obligation will be triggered if the base station transmitting antenna is determined to have a line-of-sight path with the receiving antenna of the relocated BRS system hub. For BRS systems using the 2150–2160/62 MHz band exclusively to provide one-way transmission to subscribers, *i.e.*, delivery of video programming, we employ a different line-of-sight test, as we have above in the relocation process, to account for the fact that interference to the BRS system would occur at the subscriber's end user equipment. For these systems, a cost obligation will be triggered if the AWS entrant has line of sight to the BRS incumbent's GSA.

54. The Commission chooses the line-of-sight test described as the test for triggering cost-sharing obligations for a number of reasons. As an initial matter, line of sight provides an appropriate test for determining whether an AWS entrant in the 2150–2160/62 MHz band must relocate a co-channel BRS incumbent. It is therefore also an appropriate means of determining whether other AWS entrants would have been required to relocate the system, and have thus benefited from the relocation. As a 'bright line' test, it also satisfies the requests of several commenters for clarity and certainty in the cost-sharing process. We also expect that the administrative burden of applying the line-of-sight test to identify beneficiaries of a relocation and the potential for disputes over its application will be limited for several reasons. First, because we have excluded licensees operating solely in adjacent and non-adjacent spectrum from cost-sharing obligations, only co-channel interference need be considered. Second, there are a relatively limited number of BRS systems and thus few systems for whom potential beneficiaries will need to be determined. Third, because the 2145–2155 MHz block will be licensed on a REAG basis, which is the largest geographic area license in the AWS spectrum, we expect that only one 2145–2155 MHz licensee would typically cause interference to a BRS system, and thus that there will be few instances of cost sharing between 2145–2155 MHz licensees.

55. *Obtaining Reimbursement Rights.* As in the PCS system, in order to receive reimbursement from licensees that benefit from a relocation, we require an AWS relocator to register the system that has been relocated with a cost-sharing clearinghouse. Following the PCS model, as modified above for AWS relocation of FS, we provide that AWS licensees receive rights to reimbursement on the date that they enter into an agreement to relocate a BRS system in the 2150–2160/62 MHz band, and we require them to register documentation of the relocation agreement, with a clearinghouse within 30 calendar days of the date that the relocation agreement is signed. In the event that relocation is involuntary, we require the AWS licensee to file documentation of the relocation with the clearinghouse within 30 calendar days after the end of the relocation process, which will be the end of the one-year trial period in the absence of any disputes during that period.

56. The Commission further requires AWS licensees, in registering their reimbursement rights with a clearinghouse, to provide certain information necessary to implement the reimbursement trigger test we have established. To determine whether an AWS licensee beginning operation of a base station has triggered a reimbursement obligation, a clearinghouse will apply a line-of-sight test. The precise line-of-sight method differs depending on whether the relocated system used the 2150–2160/62 MHz band for one-way transmissions to their subscribers' end user equipment or to receive broadband data at the BRS receive station hub. Therefore, we require AWS licensees registering relocated systems to provide the following information to the clearinghouse: (1) A detailed description of the relocated system's spectral frequency use; (2) if the system exclusively provided one-way transmission to subscribers, the GSA of the relocated system; and (3) if the system did not exclusively provide one-way transmission to subscribers, the system hub antenna's geographic location and the above ground level height of the receive station hub's receiving antenna centerline.

57. *Registration of New or Modified AWS Stations.* Every AWS licensee that constructs a new site or modifies an existing site in the 2.1 GHz band must file certain site information with the clearinghouse(s) prior to commencing operations. To ensure that a clearinghouse can apply the line-of-sight test to identify beneficiaries of a BRS relocation, however, we will require AWS licensees that construct or modify a site in the 2150–2162 MHz band to file, in addition to the information required from other 2.1 GHz AWS licensees, the above ground level height of the transmitting antenna centerline. We note, in particular, that the duty to file this information applies to an AWS licensee that modifies the frequencies used by a station such that a station previously operating entirely outside the 2150–2162 MHz band now operates inside the band. We further impose a continuing duty on entities to maintain the accuracy of the data on file with the clearinghouse, including height data and spectrum use.

58. *Determining Reimbursement Rights.* A particular beneficiary's cost-sharing obligation will be calculated using the PCS cost-sharing formula, which imposes on each beneficiary a *pro rata* share of the relocation cost reduced in amount by a depreciation factor. We modify the PCS formula in one respect however using a fifteen year depreciation period rather than the ten year period used by PCS and AWS licensees. Choosing the same fifteen-year period for depreciation that we have chosen above for the relocation sunset period ensures that any AWS beneficiary that enters BRS spectrum before the relocation sunset will incur some obligation to share in the cost of the prior relocation.

59. The Commission follows the policy in the PCS cost-sharing rules that entitles relocators to full reimbursement

without depreciation (rather than a *pro rata* amount subject to depreciation) where they relocate facilities that do not pose an interference problem to their own stations. This policy is intended to provide a new licensee with an incentive to relocate an incumbent's entire network instead of only those facilities that the licensee would be required to relocate under an interference analysis. Here, because we require relocation on a system-by-system basis (*i.e.*, a licensee that interferes with part of a BRS system must relocate the entire system, but not necessarily a separate system that is part of the BRS incumbent's network), we hold that relocators will be entitled to 100 percent reimbursement for the costs of relocating a particular system if they would not have triggered a relocation obligation for that system. As with the PCS and AWS rules, we adopt a simplified test for determining when a relocator would have been required to relocate the system that ignores the possibility of adjacent or non-adjacent channel interference. Specifically, we will allow full reimbursement of compensable costs if either (1) the AWS relocator's licensed frequency band is fully outside the BRS system's spectrum; or (2) the AWS relocator would not have triggered relocation under the applicable line-of-sight test. We decline to adopt a cap on the amount of reimbursement that benefiting entrants may owe. Even if the cap were to apply only to cost-sharing obligations, we are not persuaded that it is practical for incumbents to determine such costs at this time. We also note that a cap on cost-sharing obligations would have no effect on incumbents' rights to relocation costs and would only limit the rights of AWS licensees to receive reimbursement from other AWS licensees. In addition, there is no basis in the record to for the Commission to determine a specific cap. AWS licensees will therefore not have the safeguard and assurance of a specific cap on their reimbursement obligations as they do under the PCS cost-sharing rules. We nevertheless conclude that the rules we adopt below will provide beneficiaries with adequate protection from excessive reimbursement obligations. The PCS cost-sharing rules that we will incorporate include many other protections against excessive costs and, in addition, we have made modifications to the rules, as discussed below, to add to those protections.

60. First, in defining reimbursable costs, we follow the policy in the PCS cost-sharing rules of limiting reimbursement to the actual cost of providing comparable facilities. Actual costs include those costs for which a relocator would be responsible in an involuntary relocation. In addition, incumbent transaction costs that are directly attributable to the relocation will also be subject to cost-sharing reimbursement up to a cap of two percent of the "hard" costs. Any relocation payments beyond these costs described, so-called "premium" payments, are not reimbursable. As we have with the FS cost-sharing regime, we further require relocators to prepare and submit an itemized documentation of all reimbursable relocation costs. In providing itemization, we direct parties to provide itemization of any applicable costs listed in § 24.243(b), and for other costs, such as equipment not listed in § 24.243(b), to be guided by that provision in determining appropriate detail of itemization. We direct the clearinghouse to require re-filing of any documentation found to be insufficiently specific.

61. In addition to preparing the documentation, the Commission requires each relocator, as a prerequisite for receiving reimbursement through the cost-sharing regime, to obtain a third-party appraisal of the actual costs of replacing the system with comparable facilities prior to relocation, and to provide this appraisal to the clearinghouse with its registration. We provide one exception to the requirement of a third-party appraisal that should allow for a more efficient process in cases where cost claims are well within the bounds of reasonableness. An AWS relocator may register its reimbursement claim without providing the third-party appraisal, on condition that, in submitting its cost claim, it consents to binding resolution of any good faith disputes regarding that claim by the clearinghouse under the following standard: the relocator shall bear the ultimate burden of proof, and shall be required to demonstrate by clear and convincing evidence that its request does not exceed the actual costs of relocating the relevant BRS system or systems to comparable facilities. We expect that, by imposing on AWS relocators a substantial burden of proof and the risk of losing reimbursement rights, we will discourage them from exercising the option to waive an appraisal except in those cases where, even in the absence of an appraisal, disputes are unlikely to arise.

62. The Commission further notes that the depreciation of reimbursement obligations itself should help to deter excessive relocation costs. The fact that reimbursement obligations depreciate over time (with the limited exception noted above) will mean that the relocator will usually bear the largest share of the burden. Thus it will provide the relocator with greater incentive to obtain relocation at a reasonable cost in the first instance.

63. Taken together, these measures should provide subsequent entrants with sufficient assurance in most cases that their cost-sharing obligations are not excessive. Should parties have good faith objections to reimbursement claims, however, they may exercise the same dispute resolution options available under the PCS cost-sharing rules including review by the clearinghouse, and possible resolution by alternative dispute resolution methods such as arbitration. We require, as we have above with FS cost-sharing disputes, that parties submit BRS cost-sharing disputes to the clearinghouse in the first instance.

64. *Participation in the Cost-sharing Plan.* The cost-sharing obligations we establish above merely serve as defaults. As in the PCS cost-sharing rules parties remain free to enter into private cost-sharing arrangements that alter some or all of these default obligations. Such private agreements may serve to further limit disputes regarding particular obligations. We emphasize, however, that parties to a private cost-sharing agreement may continue to seek reimbursement under the cost-sharing rules from those licensees that are not party to the agreement. Further, except insofar as there is a superseding agreement, we require all AWS licensees to participate in the cost-sharing process as established above. Thus, AWS relocators of a BRS system, to receive reimbursement, must pursue such reimbursement through the process established above, except to the extent that they have made agreements to an alternative process. Likewise, all AWS licensees that benefit from a relocation will be subject to the cost-sharing obligations established above unless there is an applicable agreement that supersedes those obligations.

65. *Payment Issues and Incorporation of FS Rulings.* With regard to the timing of payments, and the eligibility for installment payments, the Commission adopts the same rules for the BRS cost-sharing regime as we applied in the PCS cost-sharing system. We also follow, in the BRS context, the ruling that cost-sharing obligations are not terminated by the physical deconstruction of the benefiting AWS base station.

66. *Sunset.* The Commission concludes that the cost-sharing regime should terminate on the same day that the relocation obligation in the 2150–

2160/62 MHz band sunsets. We note that after the obligation to relocate BRS incumbents sunsets, a new AWS entrant need not incur any expense to require incumbents to vacate, and therefore receives no benefit from an earlier relocation. Because licensees entering after the relocation sunset receive no benefit from an earlier relocation, we conclude that it is appropriate that they should incur no cost obligations. Accordingly, while any reimbursement obligation that has accrued on or before the cost-sharing sunset date will continue, no new obligations will accrue after that date.

Summary of the Order (WT Docket No. 02–353)

67. In 2003, the Commission adopted a rule in the *Report and Order in WT Docket No. 02–353* (*"AWS–1 Service Rules Order"*), 69 FR 5711, February 6, 2004, to require AWS licensees in the 2110–2155 MHz band to coordinate with incumbent BRS licensees operating in the 2150–2155 MHz band prior to initiating operations from any base or fixed station. WCA filed a Petition for Reconsideration averring that this rule inadequately protects BRS incumbents operating in the 2150–2160/62 MHz band from interference. WCA contends that this coordination approach is inconsistent with the Commission's statement in the *AWS–1 Service Rules Order* that "until such time as [MDS] operations are relocated, they must be protected from interference from AWS systems." WCA adds that "had the [*AWS–1 Service Rules Order*] ended there [WCA's] petition for reconsideration would not have been necessary."

68. In the *Ninth R&O* in ET Docket No. 00–258, we adopt significant revisions to our rules and policies regarding BRS channel 1 and 2/2A relocation. We find that our actions in the *Ninth R&O* have rendered the WCA Petition moot. We therefore dismiss the petition for that reason.

Procedural Matters

69. Final Regulatory Flexibility Analysis for Ninth Report and Order. *As required by* Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the proposals suggested in this document. The FRFA is set forth in Appendix B.

70. *Final Paperwork Reduction Analysis.* This *Ninth Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3705(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107–198 (*see* 44 U.S.C. 3506(c)(4)), the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

71. *Congressional Review Act.* The Commission will send a copy of this *Ninth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

124. As required by the Regulatory Flexibility Act (RFA)[1] an Initial Regulatory Flexibility Analysis was incorporated in the *Fifth Notice of Proposed Rule Making* (Fifth Notice) in ET Docket 00–258, 70 FR 61752, October 26, 2005.[2] The Commission sought written public comment on the proposals in the *Fifth Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Ninth Report and Order

125. The *Ninth Report and Order* (Ninth R&O) adopts relocation procedures to govern the relocation of: (1) Broadband Radio Service (BRS)[4] licensees in the 2150–2160/62 MHz band; and (2) Fixed Microwave Service (FS) licensees in the 2110–2150 MHz and 2160–2180 MHz bands. The *Ninth R&O* also adopts cost sharing rules that identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of FS operations in the 2110–2150 MHz band 2150–2200 MHz band and AWS entrants benefiting from the relocation of BRS operations in the 2150–2160/62 MHz band. The adopted relocation and cost sharing procedures generally follow the Commission's relocation and cost sharing policies delineated in the Emerging Technologies proceeding, and as modified by subsequent decisions.[5] These relocation policies are designed to allow early entry for new technology providers by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees, and have been tailored to set forth specific relocation schemes appropriate for a variety of different new entrants, including AWS, MSS, Personal Communications Service (PCS) licensees, 18 GHz Fixed Satellite Service (FSS) licensees, and Sprint Nextel. While these new entrants occupy different frequency bands, each entrant has had to relocate incumbent operations. The relocation and cost sharing procedures we adopt in the *Ninth R&O* are designed to ensure an orderly and expeditious transition of, with minimal disruption to, incumbent BRS operations from the 2150–2160/62 MHz band and FS operations from the 2110–2150 MHz and 2160–2180 MHz bands, in order to allow early entry for new AWS licensees into these bands.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

126. One comment was filed in response to the *Order* portion of the *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order,*

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Amendment of part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order,* 20 FCC Rcd 15866 (2005).

[3] 5 U.S.C. 604.

[4] The Multipoint Distribution Service (MDS) was renamed the Broadband Radio Service (BRS). *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 MHz Band, WT Docket No. 03–66, *Report and Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004).

[5] *See* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies. ET Docket No. 92–9, *First Report and Order and Third Notice of Proposed Rule Making,* 7 FCC Rcd 6886 (1992); *Second Report and Order,* 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order,* 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order,* 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order,* 9 FCC Rcd 7797 (1994); *aff'd Association of Public Safety Communications Officials-International, Inc. v. FCC,* 76 F.3d 395 (DC Cir. 1996) (collectively, "*Emerging Technologies* proceeding"). *See also Teledesic, LLC v. FCC,* 275 F.3d 75 (DC Cir. 2001) (affirming modified relocation scheme for new satellite entrants to the 17.7–19.7 GHz band). *See also* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157, *First Report and Order and Further Notice of Proposed Rule Making,* 11 FCC Rcd 8825 (1996); *Second Report and Order,* 12 FCC Rcd 2705 (1997) (collectively, *Microwave Cost Sharing* proceeding).

objecting to the suggestion by some commenters to the *Fifth NPRM* that the BRS entities should submit an estimate of the costs necessary to relocate the BRS entities' stations. The Wireless Communications Association International, Inc. objects to the imposition of any future information disclosure obligations on BRS channel 1 and 2 licensees regarding their relocation costs because it would require BRS licensees to speculate as to future events, conduct extensive due diligence to identify information that is not presently within their possession, or provide AWS auction participants with commercially sensitive information that could be utilized by AWS auction winners to the detriment of BRS licensees and lessees. In the *Ninth R&O*, the Commission decides not to require BRS licensees to submit an estimate of their relocation costs. Accordingly, we need not further address WCA's comments for purposes of this FRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

127. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules adopted herein.[6] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[8] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[9]

128. *Broadband Radio Service.* The Broadband Radio Service (BRS) consists of Multichannel Multipoint Distribution Service (MMDS) systems, which were originally licensed to transmit video programming to subscribers using the microwave frequencies of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[10] In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard.[11] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[12] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[13]

129. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[14] which includes all such companies generating $13.5 million or less in annual receipts.[15] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year.[16] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[17] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies. Because the Commission's action only affects MDS operations in the 2155–2160/62 MHz band, the actual number of MDS providers who will be affected by the proposed reallocation will only represent a small fraction of these small businesses.

130. *Fixed Microwave Services.* Microwave services include common carrier,[18] private-operational fixed,[19] and broadcast auxiliary radio services.[20] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[21] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[22] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000

[6] 5 U.S.C. 604(a)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[9] 15 U.S.C. 632.

[10] Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, ¶ 7 (1995) ("MDS Auction R&O"). The MDS and ITFS was renamed the Broadband Radio Service (BRS) and Educational Broadband Service (EBS), respectively. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 MHz Band, WT Docket No. 03–66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

[11] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration (dated Mar. 20, 2003) (noting approval of $40 million size standard for MDS auction).

[12] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O*, 10 FCC Rcd at 9608, ¶ 34.

[13] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $13.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[14] 13 CFR 121.201, NAICS code 517510.

[15] *Id.*

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

[17] *Id.*

[18] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[19] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[20] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[21] 13 CFR 121.201, NAICS code 517212.

[22] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5 (issued Oct. 2000).

employees or more.[23] Thus, under this size standard, majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

131. Advanced Wireless Service (AWS). We do not yet know how many applicants or licensees in the 2110–2150 MHz and 2160–2200 MHz bands will be small entities. Thus, the Commission assumes, for purposes of this FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our two special small business size standards for these bands. Although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS bands are comparable to those used for cellular service and personal communications service.

132. *Wireless Telephony Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging*[24] *and Cellular and Other Wireless Telecommunications.*[25] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,[26] 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees.[27] Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

133. *Mobile Satellite Service.* There are currently two space-station authorizations for Mobile Satellite Service (MSS) systems that would operate with 2 GHz mobile Earth stations. Although we know the number and identity of the space-station operators, neither the number nor the identity of future 2 GHz mobile-Earth-station licensees can be determined from that data. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

134. The Ninth R&O adopts relocation and cost-sharing procedures applicable to AWS licensees relative to incumbent BRS licensees in the 2150–2160/62 MHz band and incumbent FS licensees in the 2110–2130 MHz and 2160–2180 MHz bands, and AWS and MSS/ATC relative to incumbent FS licensees in the 2130–2150 MHz and 2180–2200 MHz bands, but does not adopt service rules. The *Ninth R&O* includes requirements for interference analyses (for FS) and line-of-sight determinations (for BRS), as well as good faith negotiations for relocation purposes. All AWS entities that benefit from the clearance of this spectrum by other AWS entities or by a voluntarily relocating microwave incumbent must contribute to such relocation costs. AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation. AWS entities are required to reimburse other AWS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse. To obtain reimbursement, the relocator must submit documentation itemizing relocation costs to the clearinghouse in the form of uniform cost data along with a copy, without redaction, of the relocation agreement, if relocation was undertaken pursuant to a negotiated contract. A third party appraisal of relocation costs must be prepared and submitted to the clearinghouse by AWS relocators of BRS systems and by voluntarily relocating microwave incumbents. AWS relocators, MSS/ATC relocators and voluntarily relocating microwave incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost sharing obligation.

135. AWS entities and MSS/ATC operators are required to file a notice containing site-specific data with the clearinghouse prior to initiating operations in the subject bands for newly constructed sites and for modified existing sites. However, AWS entities and MSS/ATC operators may satisfy this requirement by submitting a prior coordination notice (PCN) to the clearinghouse if a PCN was prepared in order to comply with coordination requirements previously adopted by the Commission. AWS entities and MSS/ATC operators that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse until the sunset date specified in the Commission's Rules. AWS entities and MSS/ATC operators must pay the amount owed within 30 calendar days of receiving written notification of an outstanding reimbursement obligation. Parties of interest contesting the clearinghouse's determination of specific cost sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

136. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[28]

137. In the *Ninth R&O*, the Commission decides to adopt relocation and cost sharing rules that are designed to support the introduction of AWS, with minimal disruption to incumbent BRS and FS operations, because doing

[23] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[24] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517211 (changed from 513321 in October 2002).

[25] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212 (changed from 513322 in October 2002).

[26] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service", Table 5.3, page 5–5 (June 2005). This source uses data that are current as of October 1, 2004.

[27] *Id.*

[28] 5 U.S.C. 603(c).

so will promote the rapid deployment of efficient radio communications but won't interrupt incumbents' provision of service to subscribers. An alternative option would have been to offer no relocation or cost sharing processes, and instead require incumbent licensees to cease use of the band by a date certain and prohibit new licensees from entering the band until that date. We believe that an *Emerging Technologies*-based relocation and cost sharing procedure is preferable, as it draws on established and well-known principles (such as time-based negotiation periods and the requirement of negotiating in good faith), benefits small BRS and FS licensees because the proposals would require new AWS licensees to pay for the costs to relocate their incumbent operations to comparable facilities, and—for small AWS licensees—offers a process by which new services can be brought to the market expeditiously. Moreover, we believe that the provision of additional spectrum that can be used to support AWS will directly benefit small business entities by providing new opportunities for the provision of innovative new fixed and mobile wireless services.

138. In the *Ninth R&O*, the Commission also avoids imposing additional burdens on licensees by adopting rules that permit, to the extent practicable, licensees to satisfy certain requirements by using documents that are prepared in compliance with other Commission Rules. For example, AWS entities and MSS/ATC operators are required to file a notice containing site-specific data with the clearinghouse prior to initiating operations in the subject bands for newly constructed sites and for modified existing sites. However, AWS entities and MSS/ATC operators may satisfy this requirement by submitting a prior coordination notice (PCN) to the clearinghouse if a PCN was prepared in order to comply with coordination requirements previously adopted by the Commission. In addition, the Ninth R&O adopts a rule that allows an AWS relocator of a BRS system to avoid incurring the costs of preparing and submitting a third party appraisal of relocation costs if it consents to binding resolution by the clearinghouse of any good faith cost disputes regarding the reimbursement claim.

F. Report to Congress

139. The Commission will send a copy of the *Ninth R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[29] In addition, the Commission will send a copy of the *Ninth R&O*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Ninth R&O* and the FRFA (or summaries thereof) will also be published in the **Federal Register**.[30]

Ordering Clauses

140. Pursuant to Sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332, this Ninth Report and Order *is adopted* and parts 22, 27, and 101 of the Commission's Rules *are amended*, as specified in Appendix A, effective June 23, 2006, except for §§ 27.1166(a), (b) and (e); 27.1170; 27.1182(a), (b); and 27.1186, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections when approved. Also, the Petition for Reconsideration filed by the Wireless Communications Association International on March 8, 2004 (WT Docket No. 02–353), *is dismissed* as moot.

141. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Ninth Report and Order and Order*, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 101

Communications, equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 22, 27, and 101 as follows:

[29] *See* 5 U.S.C. 801(a)(1)(A).

[30] *See* 5 U.S.C. 604(b).

PART 22—PUBLIC MOBILE SERVICES

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

■ 2. Section 22.602 is amended by removing and reserving paragraphs (b) and (h), revising paragraphs (c), (d) introductory text, (e) introductory text and (j), and by adding a new paragraph (k) to read as follows:

§ 22.602 Transition of the 2110–2130 MHz and 2160–2180 MHz channels to emerging technologies.

* * * * *

(c) Relocation of fixed microwave licensees in the 2110–2130 MHz and 2160–2180 MHz bands will be subject to mandatory negotiations only. A separate mandatory negotiation period will commence for each fixed microwave licensee when an ET licensee informs that fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year mandatory negotiation period.

(d) The mandatory negotiation period is triggered at the option of the ET licensee. Once mandatory negotiations have begun, a PARS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

* * * * *

(e) *Involuntary period.* After the end of the mandatory negotiation period, ET licensees may initiate involuntary relocation procedures under the Commission's rules. ET licensees are obligated to pay to relocate only the specific microwave links to which their systems pose an interference problem. Under involuntary relocation, a PARS licensee is required to relocate, provided that:

* * * * *

(j) *Sunset.* PARS licensees will maintain primary status in the 2110–2130 MHz and 2160–2180 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.*, for the 2110–2130 MHz and 2160–2180 MHz bands, ten years after the first ET license

is issued in the respective band). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10–F or any standard successor. ET licensee notification to the affected PARS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the PARS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the PARS licensee to continue to operate on a mutually agreed upon basis. If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (*e.g.*, because no alternative spectrum or other reasonable option is available), and;

(2) The public interest would be harmed if the incumbent is forced to terminate operations (*e.g.*, if public safety communications services would be disrupted).

(k) *Reimbursement and relocation expenses in the 2110–2130 MHz and 2160–2180 MHz bands.* Whenever an ET licensee in the 2110–2130 MHz and 2160–2180 MHz band relocates a paired PARS link with one path in the 2110–2130 MHz band and the paired path in the 2160–2180 MHz band, the ET license will be entitled to reimbursement pursuant to the procedures described in §§ 27.1160 through 27.1174 of this chapter.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

Subpart L—1710–1755 MHz, 2160–2180 MHz Bands

■ 3. The heading for subpart L is revised to read as set forth above.

■ 3a. Section 27.1102, section heading is revised to read as follows:

§ 27.1102 Designated Entities in the 1710–1755 MHz and 2110–2155 MHz bands

* * * * *

■ 4. Section 27.1111 is revised to read as follows:

§ 27.1111 Relocation of fixed microwave service licensees in the 2110–2150 MHz band.

Part 22, subpart E and part 101, subpart B of this chapter contain provisions governing the relocation of incumbent fixed microwave service licensees in the 2110–2150 MHz band.

■ 5. Section 27.1132 is revised to read as follows:

§ 27.1132 Protection of incumbent operations in the 2150–2160/62 MHz band.

All AWS licensees, prior to initiating operations from any base or fixed station, shall follow the provisions of § 27.1255 of this part.

■ 6. Part 27, Subpart L is amended by adding §§ 27.1160, 27.1162, 27.1164, 27.1166, 27.1168, 27.1170, 27.1172, 27.1174, 27.1176, 27.1178, 27.1180, 27.1182, 27.1184, 27.1186, 27.1188, and 27.1190 to read as follows:

Cost-Sharing Policies Governing Microwave Relocation From the 2110–2150 MHz and 2160–2200 MHz Bands

§ 27.1160 Cost-sharing requirements for AWS.

Frequencies in the 2110–2150 MHz and 2160–2180 MHz bands listed in § 101.147 of this chapter have been reallocated from Fixed Microwave Services (FMS) to use by AWS (as reflected in § 2.106) of this chapter. In accordance with procedures specified in § 22.602 and §§ 101.69 through 101.82 of this chapter, AWS entities are required to relocate the existing microwave licensees in these bands if interference to the existing microwave licensee would occur. All AWS entities that benefit from the clearance of this spectrum by other AWS entities or by a voluntarily relocating microwave incumbent must contribute to such relocation costs. AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 27.1164. However, AWS entities are required to reimburse other AWS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 27.1162) from AWS entities or other Emerging Technologies (ET) entities, including Mobile Satellite Service (MSS) operators (for Ancillary Terrestrial Component (ATC) base stations), that are not parties to the agreement. The cost-sharing plan is in effect during all phases of microwave relocation specified in § 22.602 and 101.69 of this chapter. If an AWS licensee enters into a spectrum leasing arrangement (as set forth in part 1, subpart X of this chapter) and the spectrum lessee triggers a cost-sharing obligation, the licensee is the AWS entity responsible for satisfying the cost-sharing obligations under §§ 27.1160–27.1174.

§ 27.1162 Administration of the Cost-Sharing Plan.

The Wireless Telecommunications Bureau, under delegated authority, will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan by, *inter alia*, determining the cost-sharing obligation of AWS and other ET entities for the relocation of FMS incumbents from the 2110–2150 MHz and 2160–2200 MHz bands. The clearinghouse filing requirements (see §§ 27.1166(a), 27.1170) will not take effect until an administrator is selected.

§ 27.1164 The cost-sharing formula.

An AWS relocator who relocates an interfering microwave link, *i.e.*, one that is in all or part of its market area and in all or part of its frequency band or a voluntarily relocating microwave incumbent, is entitled to *pro rata* reimbursement based on the following formula:

$$R_N = \frac{C}{N} \times \frac{[120 - (T_m)]}{120}$$

(a) R_N equals the amount of reimbursement.

(b) C equals the actual cost of relocating the link(s). Actual relocation costs include, but are not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under § 101.103(d) of this chapter; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. Increased recurring costs represent part of the actual cost of relocation and, even if the compensation to the incumbent is in the form of a commitment to pay five years of charges, the AWS or MSS/ATC relocator is entitled to seek immediate reimbursement of the lump sum amount based on present value using current interest rates, provided it has entered into a legally binding agreement to pay the charges. C also includes voluntarily relocating microwave incumbent's independent third party appraisal of its compensable relocation costs and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. C may not exceed $250,000 per paired link, with an additional $150,000 permitted if a new or modified tower is required.

(c) N equals the number of AWS and MSS/ATC entities that have triggered a cost-sharing obligation. For the AWS relocator, N=1. For the next AWS entity triggering a cost-sharing obligation, N=2, and so on. In the case of a voluntarily relocating microwave incumbent, N=1 for the first AWS entity triggering a cost-sharing obligation. For the next AWS or MSS/ATC entity triggering a cost-sharing obligation, N=2, and so on.

(d) T_m equals the number of months that have elapsed between the month the AWS or MSS/ATC relocator or voluntarily relocating microwave incumbent obtains reimbursement rights for the link and the month in which an AWS entity triggers a cost-sharing obligation. An AWS or MSS/ATC relocator obtains reimbursement rights for the link on the date that it signs a relocation agreement with a microwave incumbent. A voluntarily relocating microwave incumbent obtains reimbursement rights for the link on the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules.

§ 27.1166 Reimbursement under the Cost-Sharing Plan.

(a) *Registration of reimbursement rights.* Claims for reimbursement under the cost-sharing plan are limited to relocation expenses incurred on or after the date when the first AWS license is issued in the relevant AWS band (start date). If a clearinghouse is not selected by that date (see § 27.1162) claims for reimbursement (see § 27.1166) and notices of operation (see § 27.1170) for activities that occurred after the start date but prior to the clearinghouse selection must be submitted to the clearinghouse within 30 calendar days of the selection date.

(1) To obtain reimbursement, an AWS relocator or MSS/ATC relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocator or MSS/ATC relocator must submit documentation of the relocated system within 30 calendar days after the end of the relocation.

(2) To obtain reimbursement, a voluntarily relocating microwave incumbent must submit documentation of the relocation of the link to the clearinghouse within 30 calendar days of the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules.

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocator, MSS/ATC relocator, or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items specifically listed in § 27.1164(b), as well as any reimbursable items not specifically listed in § 27.1164(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocator, MSS/ATC relocator, or the voluntarily relocating microwave incumbent must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with a copy, without redaction, of either the relocation agreement, if any, or the third party appraisal described in (b)(1), if relocation was undertaken by the microwave incumbent. AWS relocators, MSS/ATC relocators and voluntarily relocating microwave incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. If an AWS relocator pays a microwave incumbent a monetary sum to relocate its own facilities, the AWS relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 27.1164(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement.

(1) *Third party appraisal.* The voluntarily relocating microwave incumbent, must also submit an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual

cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades or items outside the scope of § 27.1164(b).

(2) *Identification of links.* The AWS relocator, MSS/ATC relocator, or the voluntarily relocating microwave incumbent, must identify the particular link associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous links). Where the AWS relocator, MSS/ATC relocator, or voluntarily relocating microwave incumbent relocates both paths of a paired channel microwave link (*e.g.*, 2110–2130 MHz with 2160–2180 MHz and 2130–2150 MHz with 2180–2200 MHz), the AWS relocator, MSS/ATC relocator, or voluntarily relocating microwave incumbent must identify the expenses associated with each paired microwave link.

(c) *Full Reimbursement.* An AWS relocator who relocates a microwave link that is either fully outside its market area or its licensed frequency band may seek full reimbursement through the clearinghouse of compensable costs, up to the reimbursement cap as defined in § 27.1164(b). Such reimbursement will not be subject to depreciation under the cost-sharing formula.

(d) *Good Faith Requirement.* New entrants and incumbent licensees are expected to act in good faith in satisfying the cost-sharing obligations under §§ 27.1160 through 27.1174. The requirement to act in good faith extends to, but is not limited to, the preparation and submission of the documentation required in paragraph (b) of this section.

(e) *MSS Participation in the Clearinghouse.* MSS operators are not required to submit reimbursements to the clearinghouse for links relocated due to interference from MSS space-to-Earth downlink operations, but may elect to do so, in which case the MSS operator must identify the reimbursement claim as such and follow the applicable procedures governing reimbursement in part 27. MSS reimbursement rights and cost-sharing obligations for space-to-Earth downlink operations are governed by § 101.82 of this chapter.

(f) *Reimbursement for Self-relocating FMS links in the 2130–2150 MHz and 2180–2200 MHz bands.* Where a voluntarily relocating microwave incumbent relocates a paired microwave link with paths in the 2130–2150 MHz and 2180–2200 MHz bands, it may not seek reimbursement from MSS operators (including MSS/ATC operators), but is entitled to partial reimbursement from the first AWS beneficiary, equal to fifty percent of its actual costs for relocating the paired link, or half of the reimbursement cap in § 27.1164(b), whichever is less. This amount is subject to depreciation as specified § 27.1164(b). An AWS licensee who is obligated to reimburse relocation costs under this rule is entitled to obtain reimbursement from other AWS beneficiaries in accordance with §§ 27.1164 and 27.1168. For purposes of applying the cost-sharing formula relative to other AWS licensees that benefit from the self-relocation, the fifty percent attributable to the AWS entrant shall be treated as the entire cost of the link relocation, and depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent. The cost-sharing obligations for MSS operators in the 2180–2200 MHz band are governed by § 101.82 of this chapter.

§ 27.1168 Triggering a Reimbursement Obligation.

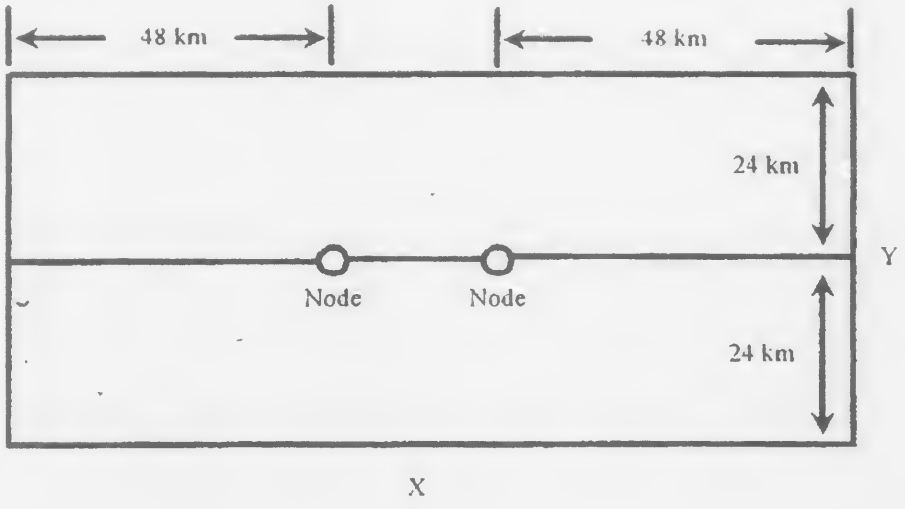
(a) The clearinghouse will apply the following test to determine when an AWS entity or MSS/ATC entity has triggered a cost-sharing obligation and therefore must pay an AWS relocator, MSS relocator (including MSS/ATC), or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 27.1164:

(1) All or part of the relocated microwave link was initially co-channel with the licensed AWS band(s) of the AWS entity or the selected assignment of the MSS operator that seeks and obtains ATC authority (see § 25.149(a)(2)(i) of this chapter):

(2) An AWS relocator, MSS relocator (including MSS/ATC) or a voluntarily relocating microwave incumbent has paid the relocation costs of the microwave incumbent; and

(3) The AWS or MSS entity is operating or preparing to turn on a fixed base station (including MSS/ATC) at commercial power and the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

(i) The length of the rectangle shall be *x* where *x* is a line extending through both nodes of the microwave link to a distance of 48 kilometers (30 miles) beyond each node. The width of the rectangle shall be *y* where *y* is a line perpendicular to *x* and extending for a distance of 24 kilometers (15 miles) on both sides of *x*. Thus, the rectangle is represented as follows:



(ii) If the application of the Proximity Threshold Test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the AWS or MSS/ATC entity of the total amount of its reimbursement obligation.

(b) Once a reimbursement obligation is triggered, the AWS or MSS/ATC entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

§ 27.1170 Payment Issues.

Prior to initiating operations for a newly constructed site or modified existing site, an AWS entity or MSS/ATC entity is required to file a notice containing site-specific data with the clearinghouse. The notice regarding the new or modified site must provide a detailed description of the proposed site's spectral frequency use and geographic location, including but not limited to the applicant's name and address, the name of the transmitting base station, the geographic coordinates corresponding to that base station, the frequencies and polarizations to be added, changed or deleted, and the emission designator. If a prior coordination notice (PCN) under § 101.103(d) of this chapter is prepared, AWS entities can satisfy the site-data filing requirement by submitting a copy of their PCN to the clearinghouse. AWS entities or MSS/ATC entities that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse. Utilizing the site-specific data, the clearinghouse will determine if any reimbursement obligation exists and notify the AWS entity or MSS/ATC entity in writing of its repayment obligation, if any. When the AWS entity or MSS/ATC entity receives a written copy of such obligation, it must pay directly to the relocator the amount owed within 30 calendar days.

§ 27.1172 Dispute Resolution Under the Cost-Sharing Plan.

(a) Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques.

(b) *Evidentiary requirement.* Parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

§ 27.1174 Termination of Cost-Sharing Obligations.

The cost-sharing plan will sunset for all AWS and MSS (including MSS/ATC) entities on the same date on which the relocation obligation for the subject AWS band (*i.e.*, 2110–2150 MHz, 2160–2175 MHz, or 2175–2180 MHz) in which the relocated FMS link was located terminates. AWS or MSS (including MSS/ATC) entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

Cost-Sharing Policies Governing Broadband Radio Service Relocation From the 2150–2160/62 MHz Band

§ 27.1176 Cost-sharing requirements for AWS in the 2150–2160/62 MHz band.

(a) Frequencies in the 2150–2160/62 MHz band have been reallocated from the Broadband Radio Service (BRS) to AWS. All AWS entities who benefit from another AWS entity's clearance of BRS incumbents from this spectrum, including BRS incumbents occupying the 2150–2162 MHz band on a primary basis, must contribute to such relocation costs. Only AWS entrants that relocate BRS incumbents are entitled to such reimbursement.

(b) AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 27.1180. However, AWS entities are required to reimburse other AWS entities that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 27.1178) from AWS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of BRS relocation until the end of the period specified in § 27.1190. If an AWS licensee enters into a spectrum leasing arrangement and the spectrum lessee triggers a cost-sharing obligation, the licensee is the AWS entity responsible for satisfying cost-sharing obligations under these rules.

§ 27.1178 Administration of the Cost-Sharing Plan.

The Wireless Telecommunications Bureau, under delegated authority, will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan by, *inter alia*, determining the cost-sharing obligations of AWS entities for the relocation of BRS incumbents from the 2150–2162 MHz band. The clearinghouse filing requirements (*see* §§ 27.1182(a), 27.1186) will not take effect until an administrator is selected.

§ 27.1180 The cost-sharing formula.

(a) An AWS licensee that relocates a BRS system with which it interferes is entitled to *pro rata* reimbursement based on the cost-sharing formula specified in § 27.1164, except that the depreciation factor shall be $[180 - T_m]/180$, and the variable C shall be applied as set forth in paragraph (b) of this section.

(b) C is the actual cost of relocating the system, and includes, but is not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; leased facilities; and end user units served by the base station that is being relocated. In addition to actual costs, C may include the cost of an independent third party appraisal conducted pursuant to § 27.1182(a)(3) and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. There is no cap on the actual costs of relocation.

(c) An AWS system shall be considered an interfering system for purposes of this rule if the AWS system is in all or part of the BRS frequency band and operates within line of sight to BRS operations under the applicable test specified in § 27.1184. An AWS relocator that relocates a BRS system

with which it does not interfere is entitled to full reimbursement, as specified in § 27.1182(c).

§ 27.1182 Reimbursement under the Cost-Sharing Plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, an AWS relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocator must submit documentation of the relocated system within 30 calendar days after the end of the one-year trial period.

(2) Registration of any BRS system shall include:

(i) A description of the system's frequency use;

(ii) If the system exclusively provides one-way transmissions to subscribers, the Geographic Service Area of the system; and

(iii) If the system does not exclusively provide one-way transmission to subscribers, the system hub antenna's geographic location and the above ground level height of the system's receiving antenna centerline.

(3) The AWS relocator must also include with its system registration an independent third party appraisal of the compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades that are not necessary to the provision of comparable facilities. An AWS relocator may submit registration without a third party appraisal if it consents to binding resolution by the clearinghouse of any good faith cost disputes regarding the reimbursement claim, under the following standard: The relocator shall bear the burden of proof, and be required to demonstrate by clear and convincing evidence that its request does not exceed the actual cost of relocating the relevant BRS system or systems to comparable facilities. Failure to satisfy this burden of proof will result in loss of rights to subsequent reimbursement of the disputed costs from any AWS licensee.

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocator must submit documentation itemizing the amount spent for items specifically listed in § 27.1180(b), as well as any reimbursable items not specifically listed in § 27.1180(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocator must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with copies, without redaction, of the relocation agreement, if any, and the third party appraisal described in (a)(3), of this section, if prepared. The AWS relocator must identify the particular system associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous systems). If an AWS relocator pays a BRS incumbent a monetary sum to relocate its own facilities in whole or in part, the AWS relocator must itemize the actual costs to the extent determinable, and otherwise must estimate the actual costs associated with relocating the incumbent and itemize these costs. If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement. All AWS relocators seeking reimbursement through the clearinghouse have an ongoing duty to maintain all relevant records of BRS relocation-related expenses until the sunset of cost-sharing obligations, and to provide, upon request, such documentation, including a copy of the independent appraisal if one was conducted, to the clearinghouse, the Commission, or AWS entrants that trigger a cost-sharing obligation.

(c) *Full reimbursement.* An AWS relocator who relocates a BRS system that is either:

(1) Wholly outside its frequency band; or

(2) Not within line of sight of the relocator's transmitting base station may seek full reimbursement through the clearinghouse of compensable costs. Such reimbursement will not be subject to depreciation under the cost-sharing formula.

(d) *Good Faith Requirement.* New entrants and incumbent licensees are expected to act in good faith in satisfying the cost-sharing obligations under §§ 27.1176 through 27.1190. The requirement to act in good faith extends to, but is not limited to, the preparation and submission of the documentation required in paragraph (b) of this section.

§ 27.1184 Triggering a reimbursement obligation.

(a) The clearinghouse will apply the following test to determine when an AWS entity has triggered a cost-sharing obligation and therefore must pay an AWS relocator of a BRS system in accordance with the formula detailed in § 27.1180:

(1) All or part of the relocated BRS system was initially co-channel with the licensed AWS band(s) of the AWS entity;

(2) An AWS relocator has paid the relocation costs of the BRS incumbent; and

(3) The other AWS entity has turned on or is preparing to turn on a fixed base station at commercial power and the incumbent BRS system would have been within the line of sight of the AWS entity's fixed base station, defined as follows.

(i) For a BRS system using the 2150–2160/62 MHz band exclusively to provide one-way transmissions to subscribers, the clearinghouse will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's geographic service area (GSA), based on the following criteria: use of 9.1 meters (30 feet) for the receiving antenna height, use of the actual transmitting antenna height and terrain elevation, and assumption of 4/3 Earth radius propagation conditions. Terrain elevation data must be obtained from the U.S. Geological Survey (USGS) 3-second database. All coordinates used in carrying out the required analysis shall be based upon use of NAD–83.

(ii) For all other BRS systems using the 2150–2160/62 MHz band, the clearinghouse will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's receive station hub using the method prescribed in "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems. MM Docket 97–217," in Amendment of 47 CFR parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 14566 at 14610, Appendix D.

(b) If the application of the trigger test described in paragraphs (a)(3)(i) and (ii) of this section, indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the subsequent AWS entity of the total amount of its reimbursement obligation.

(c) Once a reimbursement obligation is triggered, the AWS entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

§ 27.1186 Payment issues.

Payment of cost-sharing obligations for the relocation of BRS systems in the 2150–60/62 MHz band is subject to the rules set forth in § 27.1170. If an AWS licensee is initiating operations for a newly constructed site or modified

existing site in licensed bands overlapping the 2150–2160/62 MHz band, the AWS licensee must file with the clearinghouse, in addition to the site-specific data required by § 27.1170, the above ground level height of the transmitting antenna centerline. AWS entities have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse.

§ 27.1188 Dispute resolution under the Cost-Sharing Plan.

(a) Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques.

(b) *Evidentiary requirement.* Parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

§ 27.1190 Termination of cost-sharing obligations.

The plan for cost-sharing in connection with BRS relocation will sunset for all AWS entities fifteen years after the relocation sunset period for BRS relocation commences, *i.e.*, fifteen years after the first AWS licenses are issued in any part of the 2150–2162 MHz band. AWS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

■ 6. Part 27, Subpart M is amended by adding §§ 27.1250 through 27.1255 to read as follows:

Relocation Procedures for the 2150–2160/62 MHz Band

§ 27.1250 Transition of the 2150–2160/62 MHz band from the Broadband Radio Service to the Advanced Wireless Service.

The 2150–2160/62 MHz band has been allocated for use by the Advanced Wireless Service (AWS). The rules in this section provide for a transition period during which AWS licensees may relocate existing Broadband Radio Service (BRS) licensees using these frequencies to their assigned frequencies in the 2496–2690 MHz band or other media.

(a) AWS licensees and BRS licensees shall engage in mandatory negotiations for the purpose of agreeing to terms under which the BRS licensees would:

(1) Relocate their operations to other frequency bands or other media; or alternatively

(2) Accept a sharing arrangement with the AWS licensee that may result in an otherwise impermissible level of interference to the BRS operations.

(b) If no agreement is reached during the mandatory negotiation period, an AWS licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the AWS licensee meets the conditions of § 27.1252.

(c) Relocation of BRS licensees by AWS licensees will be subject to a three-year mandatory negotiation period. BRS licensees may suspend the running of the three-year negotiation period for up to one year if the BRS licensee cannot be relocated to comparable facilities at the time the AWS licensee seeks entry into the band.

§ 27.1251 Mandatory Negotiations.

(a) Once mandatory negotiations have begun, a BRS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. The BRS licensee is required to cooperate with an AWS licensee's request to provide access to the facilities to be relocated, other than the BRS customer location, so that an independent third party can examine the BRS system and prepare an appraisal of the costs to relocate the incumbent. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the AWS licensee has made a bona fide offer to relocate the BRS licensee to comparable facilities in accordance with § 27.1252(b);

(2) If the BRS licensee has demanded a premium, the type of premium requested (*e.g.*, whether the premium is directly related to relocation, such as analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(b) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(c) Mandatory negotiations will commence for each BRS licensee when the AWS licensee informs the BRS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the BRS licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. System is defined as a base station and all end user units served by that base station. If analog facilities are being replaced with analog, comparable facilities may provide a comparable number of channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. Comparable facilities provide reliability equal to the overall reliability of the BRS system. For digital systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital video transmission, it is measured by whether the end-to-end transmission delay is within the required delay bound. If an analog system is replaced with a digital system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the BRS system. AWS licensees would compensate BRS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, and increased utility fees) for five years after relocation. AWS licensees could satisfy this obligation by making a lump-sum

payment based on present value using current interest rates. Additionally, the maintenance costs to the BRS licensee would be equivalent to the replaced system in order for the replacement system to be comparable.

(d) AWS licensees are responsible for the relocation costs of end user units served by the BRS base station that is being relocated. If a lessee is operating under a BRS license, the BRS licensee may rely on the throughput, reliability, and operating costs of facilities in use by a lessee in negotiating comparable facilities and may include the lessee in negotiations.

§ 27.1252 Involuntary Relocation Procedures.

(a) If no agreement is reached during the mandatory negotiation period, an AWS licensee may initiate involuntary relocation procedures under the Commission's rules. AWS licensees are obligated to pay to relocate BRS systems to which the AWS system poses an interference problem. Under involuntary relocation, the BRS licensee is required to relocate, provided that the AWS licensee:

(1) Guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the BRS licensee that are directly attributable to an involuntary relocation, subject to a cap of two percent of the "hard" costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. There is no cap on the actual costs of relocation. AWS licensees are not required to pay BRS licensees for internal resources devoted to the relocation process. AWS licensees are not required to pay for transaction costs incurred by BRS licensees during the mandatory period once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities; and

(2) Completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination.

(b) *Comparable facilities.* The replacement system provided to an incumbent during an involuntary relocation must be at least equivalent to the existing BRS system with respect to the following three factors:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. System is defined as a base station and all end user units served by that base station. If analog facilities are being replaced with analog, the AWS licensee is required to provide the BRS licensee with a comparable number of channels. If digital facilities are being replaced with digital, the AWS licensee must provide the BRS licensee with equivalent data loading bits per second (bps). AWS licensees must provide BRS licensees with enough throughput to satisfy the BRS licensee's system use at the time of relocation, not match the total capacity of the BRS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. AWS licensees must provide BRS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital video transmissions, it is measured by whether the end-to-end transmission delay is within the required delay bound.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the BRS system. AWS licensees must compensate BRS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, increased utility fees) for five years after relocation. AWS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the BRS licensee must be equivalent to the replaced system in order for the replacement system to be considered comparable.

(c) AWS licensees are responsible for the relocation costs of end user units served by the BRS base station that is being relocated. If a lessee is operating under a BRS license, the AWS licensee shall on the throughput, reliability, and operating costs of facilities in use by a lessee at the time of relocation in determining comparable facilities for involuntary relocation purposes.

(d) *Twelve-month trial period.* If, within one year after the relocation to new facilities, the BRS licensee demonstrates that the new facilities are not comparable to the former facilities, the AWS licensee must remedy the defects or pay to relocate the BRS licensee to one of the following: Its former or equivalent 2 GHz channels, another comparable frequency band, a land-line system, or any other facility that satisfies the requirements specified in paragraph (b) of this section. This trial period commences on the date that the BRS licensee begins full operation of the replacement system. If the BRS licensee has retained its 2 GHz authorization during the trial period, it must return the license to the Commission at the end of the twelve months.

§ 27.1253 Sunset Provisions.

(a) BRS licensees will maintain primary status in the 2150–2160/62 MHz band unless and until an AWS licensee requires use of the spectrum. AWS licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* fifteen years from the date the first AWS license is issued in the band). Once the relocation rules sunset, an AWS licensee may require the incumbent to cease operations, provided that the AWS licensee intends to turn on a system within interference range of the incumbent, as determined by § 27.1255. AWS licensee notification to the affected BRS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the BRS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the BRS licensee to continue to operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (*e.g.*, because no alternative spectrum or other reasonable option is available); and

(2) The public interest would be harmed if the incumbent is forced to terminate operations.

§ 27.1254 Eligibility.

(a) BRS licensees with primary status in the 2150–2162 MHz band as of June 23, 2006, will be eligible for relocation insofar as they have facilities that are constructed and in use as of this date.

(b) *Future Licensing and Modifications.* After June 23, 2006, all major modifications to existing BRS systems in use in the 2150–2160/62 MHz band will be authorized on a secondary basis to AWS systems, unless the incumbent affirmatively justifies primary status and the incumbent BRS licensee establishes that the modification would not add to the relocation costs of AWS licensees. Major modifications include the following:

(1) Additions of new transmit sites or base stations made after June 23, 2006;

(2) Changes to existing facilities made after June 23, 2006, that would increase the size or coverage of the service area, or interference potential, and that would also increase the throughput of an existing system (*e.g.*, sector splits in the antenna system). Modifications to fully utilize the existing throughput of existing facilities (*e.g.*, to add customers) will not be considered major modifications even if such changes increase the size or coverage of the service area, or interference potential.

§ 27.1255 Relocation Criteria for Broadband Radio Service Licensees in the 2150–2160/62 MHz band.

(a) An AWS licensee in the 2150–2160/62 MHz band, prior to initiating operations from any base or fixed station that is co-channel to the 2150–2160/62 MHz band, must relocate any incumbent BRS system that is within the line of sight of the AWS licensee's base or fixed station. For purposes of this section, a determination of whether an AWS facility is within the line of sight of a BRS system will be made as follows:

(1) For a BRS system using the 2150–2160/62 MHz band exclusively to provide one-way transmissions to subscribers, the AWS licensee will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's geographic service area (GSA), based on the following criteria: use of 9.1 meters (30 feet) for the receiving antenna height, use of the actual transmitting antenna height and terrain elevation, and assumption of 4/3 Earth radius propagation conditions. Terrain elevation data must be obtained from the U.S. Geological Survey (USGS) 3-second database. All coordinates used in carrying out the required analysis shall be based upon use of NAD–83.

(2) For all other BRS systems using the 2150–2160/62 MHz band, the AWS licensee will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's receive station hub using the method prescribed in "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems. MM Docket 97–217," in Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 14566 at 14610, Appendix D.

(b) Any AWS licensee in the 2110–2180 MHz band that causes actual and demonstrable interference to a BRS licensee in the 2150–2160/62 MHz band must take steps to eliminate the harmful interference, up to and including relocation of the BRS licensee, regardless of whether it would be required to do so under paragraph (a), of this section.

PART 101—FIXED MICROWAVE SERVICES

■ The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 9. Section 101.69 is amended by removing and reserving paragraphs (b) and (c) and adding paragraph (g) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(g) If no agreement is reached during the mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

§ 101.71 [Removed and Reserved]

■ 7. Section 101.71 is removed and reserved.

■ 8. Section 101.73 is amended by revising paragraphs (a) and the introductory text to paragraph (d) to read as follows:

§ 101.73 Mandatory Negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators (including MSS operators providing Ancillary Terrestrial Component (ATC) service) and AWS licensees in the 2110–2150 MHz and 2160–2200 MHz bands will be subject to mandatory negotiations only.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands.* Except as otherwise provided in § 101.69(e) pertaining to FMS relocations by MSS/ATC operators, a separate mandatory negotiation period will commence for each FMS licensee when an ET licensee informs that FMS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the FMS licensee with comparable facilities defined as facilities possessing the following characteristics:

* * * * *

■ 9. Section 101.75 is amended by revising paragraph (a) introductory text to read as follows:

§ 101.75 Involuntary relocation procedures.

(a) If no agreement is reached during the mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures under the Commission's rules. ET licensees are obligated to pay to relocated only the specific microwave links to which their systems pose an interference problem. Under involuntary relocation, the FMS licensee is required to relocate, provided that the ET licensee:

* * * * *

■ 10. Section 101.77 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 101.77 Public safety licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) In order for public safety licensees to qualify for a three year mandatory negotiation period as defined in § 101.69(d)(2), the department head responsible for system oversight must certify to the ET licensee requesting relocation that:

* * * * *

■ 11. Section 101.79 is amended by revising paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee (including MSS/ATC operator) requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10–F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back

into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

(1) For the 2110–2150 MHz and 2160–2175 MHz and 2175–2180 MHz bands, ten years after the first ET license is issued in the respective band; and

(2) For the 2180–2200 MHz band, December 8, 2013 (*i.e.*, ten years after the mandatory negotiation period begins for MSS/ATC operators in the service).

* * * * *

■ 12. Section 101.82 is revised to read as follows:

§ 101.82 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Reimbursement and relocation expenses for the 2110–2130 MHz and 2160–2180 MHz bands are addressed in §§ 27.1160–27.1174.

(b) *Cost-sharing obligations between AWS and MSS (space-to-Earth downlink).* Whenever an ET licensee (AWS or Mobile Satellite Service for space-to-Earth downlink in the 2130–2150 or 2180–2200 MHz bands) relocates an incumbent paired microwave link with one path in the 2130–2150 MHz band and the paired path in the 2180–2200 MHz band, the relocator is entitled to reimbursement of 50 percent of its relocation costs (see paragraph (e)) of this section from any other AWS licensee or MSS space-to-Earth downlink operator which would have been required to relocate the same fixed microwave link as set forth in paragraphs (c) and (d) of this section.

(c) *Cost-sharing obligations for MSS (space-to-Earth downlinks).* For an MSS space-to-Earth downlink, the cost-sharing obligation is based on the interference criteria for relocation, *i.e.*, TIA TSB 86 or any standard successor, relative to the relocated microwave link. Subsequently entering MSS space-to-Earth downlink operators must reimburse AWS or MSS space-to-Earth relocators (see paragraph (e)) of this section before the later entrant may begin operations in these bands, unless the later entrant can demonstrate that it would not have interfered with the microwave link in question.

(d) *Cost-sharing obligations among terrestrial stations.* For terrestrial stations (AWS and MSS Ancillary Terrestrial Component (ATC)), cost-sharing obligations are governed by §§ 27.1160 through 27.1174 of this chapter; provided, however, that MSS operators (including MSS/ATC operators) are not obligated to reimburse voluntarily relocating FMS incumbents in the 2180–2200 MHz band. (AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by § 27.1166 of this chapter).

(e) The total costs of which 50 percent is to be reimbursed will not exceed $250,000 per paired fixed microwave link relocated, with an additional $150,000 permitted if a new or modified tower is required.

[FR Doc. 06–4769 Filed 5–23–06; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 06–70]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission extends, on an interim basis, the current freeze of part 36 category relationships and jurisdictional cost allocation factors, which would otherwise expire on June 30, 2006. Extending the freeze will allow the Commission to provide stability for carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Effective June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Attorney Advisor, at (202) 418–7389 or Michael Jacobs, at (202) 418–2859, Telecommunications Access Policy Division, Wireline Competition Bureau, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in CC Docket No. 80–286, FCC 06–70, released on May 16, 2006. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The *Order* extends, on an interim basis, the current freeze of part 36 category relationships and jurisdictional cost allocation factors, which would otherwise expire on June 30, 2006. Specifically, the duration of such extension shall be no longer than three years from the initial date of this extension or until comprehensive reform of the jurisdictional separations process can be completed by the Commission and Federal-State Joint Board on Jurisdictional Separations (Joint Board), whichever is sooner. Extending the freeze will allow the Commission to provide stability for carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive separations reform.

2. In the *2001 Separations Freeze Order*, 66 FR 33202, June 21, 2001, that established the current freeze, the Commission concluded that it had the authority to adopt an interim separations freeze to preserve the status quo pending reform and provide for a reasonable allocation of costs. The analysis performed there remains applicable here.

3. In addition, under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), an administrative agency may implement a rule without public notice and comment "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission finds that good cause exists in this instance. Extending the freeze will prevent the wasteful expenditure of significant resources by carriers to develop the ability to perform separations in a manner that likely would only be relevant for a relatively short time while the Commission considers comprehensive separations reform. The Commission finds, as it did in the *2001 Separations Freeze Order*, that avoiding a sudden cost shift will provide regulatory certainty that offsets the concern that there may be a temporary misallocation of costs between the jurisdictions.

4. The Commission also finds that an interim extension of the separations freeze without public notice and comment is consistent with *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 822 F.2d 1123 (DC Cir. 1987). Here, too, the interim extension of the separations freeze is limited, and the concurrent adoption of the companion *Further Notice of Proposed Rulemaking* should allow for a timely resolution of the underlying issues. In addition, the Commission finds that the interim extension of the separations freeze does not require a referral to the Joint Board, because it is temporary in scope and

because the issue of extension was within the scope of the Joint Board's earlier recommended decision. The Commission has continued to receive valuable comments, analysis, and expertise from the Joint Board on this matter during the current separations freeze.

5. The extended freeze will be implemented as described in the *2001 Separations Freeze Order*. Specifically, price-cap carriers will use the same relationships between categories of investment and expenses within Part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers will use the same frozen jurisdictional allocation factors, and will use the same frozen category relationships if they had opted previously to freeze those as well.

I. Procedural Matters

A. Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. 5 U.S.C. 601(3). Under the Small Business Act, a small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

7. In the instant *Order*, we extend the current freeze of the part 36 category relationships and jurisdictional cost allocation factors for price cap carriers, and of the allocation factors only for rate-of-return carriers. Among the underlying objectives of the freeze are to ease the administrative burden of regulatory compliance and to provide greater regulatory certainty for all local exchange carriers subject to the Commission's part 36 rules, including some entities employing 1500 or fewer employees. The extension of the freeze will continue the status quo that has existed since July 1, 2001, when the freeze originally became effective. Moreover, the freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer (small incumbent LECs), to complete certain annual studies formerly required by the Commission's rules.

8. The *Order* poses no additional regulatory burden on incumbent LECs, including small incumbent LECs. If this extended action can be said to have any effect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs, by eliminating the aforementioned separations studies and providing these carriers with greater regulatory certainty. Furthermore, we note that the Commission specifically considered the impact of the freeze on small incumbent LECs (in general, rate-of-return carriers) in the *2001 Separations Freeze Order*, and provided them with the option to freeze their category relationships at the onset of the freeze. Our action, therefore, does nothing more than temporarily extend the status quo, which itself was certified in the *2001 Separations Freeze Order* not to have a significant economic impact on a substantial number of small entities.

9. Therefore, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of entities. The Commission will send a copy of the *Order*, including a copy of this final certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the *Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

10. The *Order* does not contain any new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

11. The Commission will send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

II. Ordering Clauses

12. Pursuant to the authority contained in sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410, this *Order* is adopted.

13. The *Order* shall be effective June 23, 2006.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–4768 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051209329–5329–01; I.D. 051806A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter II Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, May 23, 2006. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* squid per trip for the remainder of the quarter (through June 30, 2006). This action is necessary to prevent the fishery from exceeding its Quarter II quota and to allow for effective management of this stock.

DATES: Effective 0001 hours, May 23, 2006, through 2400 hours, June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid

fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2006 specification of DAH for *Loligo* squid was set at 16,872.4 mt (71 FR 10621, March 2, 2006). This amount is allocated by quarter, as shown below.

TABLE 1.—*Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons [1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II (Apr-Jun)	17.61	2,971.30	N/A
III (Jul-Sep)	17.3	2,918.90	N/A
IV (Oct-Dec)	31.86	5,375.60	N/A
Total	100	16,872.50	127.5

[1]Quarterly allocations after 127.5 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II, and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter II will be harvested by May 23, 2006. Therefore, effective 0001 hours, May 23,,2006, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, July 1, 2006, when the Quarter III quota becomes available.

Classification

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

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

Dated: May 18, 2006.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Services.

[FR Doc. 06–4826 Filed 5–19–06; 2:56 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 100
Wednesday, May 24, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–014–2]

Phytosanitary Certificates for Fruits and Vegetables Imported in Passenger Baggage; Availability of a Risk Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; availability of risk assessment and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a risk assessment relative to a previously published proposal to require imported fruits and vegetables to be accompanied by a phytosanitary certificate. The risk assessment considers the plant pest risks associated with fruits and vegetables imported in passenger baggage and the probable impact of phytosanitary certification requirements. We are considering adopting only the proposed requirements that pertain to fruits and vegetables imported in air passenger baggage. We are making the risk assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 24, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0092 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 00–014–2, 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. 00–014–2.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Griffin, Director, Plant Epidemiology and Risk Analysis Laboratory, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive Suite 1550, Raleigh, NC 27606–5202; (919) 513–1590.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (7 U.S.C. 7701–7772 and 7781–7786) authorizes the Secretary of Agriculture to prohibit or restrict the importation and entry into the United States of any plants and plant products, including fruits and vegetables, to prevent the introduction of plant pests or noxious weeds into the United States. Under this authority, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) administers regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) that prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

The regulations require some fruits and vegetables to be accompanied by a phytosanitary certificate (PC) to ensure freedom from certain plant pests. PCs are in wide use in international trade. APHIS issues hundreds of thousands of PCs each year to facilitate the export of U.S. agricultural products to countries that require certificates to accompany such products.

On August 4, 1995, we published an advance notice of proposed rulemaking in the **Federal Register** (60 FR 39888–39889, Docket No. 95–046–1). The 1995 advance notice of proposed rulemaking sought comments on whether all fruits and vegetables imported into the United States should be accompanied by a PC. This included commercial shipments of fruits and vegetables as well as produce brought into the United States by individuals for personal use.

On August 29, 2001, we published in the **Federal Register** (66 FR 45637–45648, Docket No. 00–014–1) a proposal to amend the regulations to require that a PC accompany all fruits and vegetables imported into the United States, with certain exceptions. We proposed to require a PC for commercial shipments of produce imported into the United States, as well as for fruits and vegetables brought in by most travelers. We proposed to exempt fruits and vegetables that are dried, cured, frozen, or processed, as well as fruits and vegetables that individuals bring into the United States for personal use through land border ports located along the Canadian and Mexican borders.

We solicited comments concerning our proposal for 60 days ending October 29, 2001. We received a total of 47 comments by that date from domestic growers, importers, and other shippers of fruits and vegetables; farm bureaus, marketing associations, and trade associations; State departments of agriculture; foreign governments; and others. A majority of the comments received generally opposed the proposed rule. A smaller number of comments supported the concept of requiring PCs, but took exception with certain provisions in the proposal.

Several commenters who opposed the proposed rule stated that they did not believe that the risk-reduction benefits of requiring PCs were justified by the potential costs to commercial fruit and vegetable producers, importers, and others of complying with the requirements. Commenters also claimed that requiring phytosanitary certificates

without a risk analysis that considers that broad use would be inconsistent with international trade agreements. In response to these comments, at this time, we are considering adopting only the proposed requirements that pertain to fruits and vegetables imported in air passenger baggage and have prepared a risk assessment that provides the basis for that approach.

The risk assessment that we prepared pertains to the plant pest risk posed by fruits and vegetables imported in air passenger baggage. We are making the risk assessment, titled "Qualitative Assessment of Plant Pest Risk Associated with Fruits and Vegetables in Passenger Baggage and the Probable Impact of Phytosanitary Certification Requirements," available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

After reviewing the comments, if it still appears to be an appropriate course of action, we anticipate issuing a final rule to PCs for fruits and vegetables imported for personal use by air passengers. We may at some future time, reconsider some of the other provisions discussed in the original proposed rule, such as requiring PCs for certain commercial shipments.

The risk assessment may be viewed on the Internet on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). You may also request paper copies of the risk assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the risk assessment when requesting copies. The risk assessment is also available for review in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–7923 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–139059–02]

RIN 1545–BB86

Expenses for Household and Dependent Care Services Necessary for Gainful Employment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the credit for expenses for household and dependent care services necessary for gainful employment. The proposed regulations reflect statutory amendments under the Deficit Reduction Act of 1984, the Omnibus Budget Reconciliation Act of 1987, the Family Support Act of 1988, the Small Business Job Protection Act of 1996, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, and the Working Families Tax Relief Act of 2004. The proposed regulations affect taxpayers who claim the credit for household and dependent care services and dependent care providers.

DATES: Written or electronic comments must be received by August 22, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–139059–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–139059–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–139059–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sara Shepherd (202) 622–4960: Concerning submissions of comments or a request for a public hearing, Richard Hurst, *richard.a.hurst@irscounsel.treas.gov,* or (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations, 26 CFR part 1, relating to the credit for household and dependent care services necessary for gainful employment (the credit) under section 21 of the Internal Revenue Code (Code).

The credit was originally enacted as section 44A. Final regulations under section 44A were published as "1.44A–1 through 1.44–4 on August 27, 1979 (section 44A regulations). Section 44A was amended and renumbered section 21 by sections 423 and 471, respectively, of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 494). Section 21 was amended by section 10101 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, 101 Stat. 1330), section 703 of the Family Support Act of 1988 (Pub. L. 100–485, 102 Stat. 2343), section 1615 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188, 110 Stat. 1755), section 204 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107–16, 115 Stat. 38), section 418 of the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), and sections 203 and 207 of the Working Families Tax Relief Act of 2004 (Pub. L. 108–311, 118 Stat. 1166), as well as other legislation that enacted clerical and conforming changes.

Section 21 allows a nonrefundable credit for a percentage of expenses for household and dependent care services necessary for gainful employment. For taxable years beginning after December 31, 2004, the credit is available to a taxpayer if there are one or more qualifying individuals with respect to that taxpayer. For those years, a *qualifying individual* is defined in section 21(b)(1) as the taxpayer's dependent (as defined in section 152(a)(1)) who has not attained age 13, the taxpayer's dependent who is physically or mentally incapable of self-care and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year, or the taxpayer's spouse who is physically or mentally incapable of self-care and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year.

For taxable years beginning before January 1, 2005, the credit is available to taxpayers who maintained households that include one or more qualifying individuals. For those years, a *qualifying individual* is defined in section 21(b)(1) as the taxpayer's dependent (as defined in section 151(c) as then in effect) under age 13, the taxpayer's dependent who is physically or mentally incapable of self-care, or the taxpayer's spouse who is physically or mentally incapable of self-care.

Under section 21(a), the amount of the credit is equal to the applicable percentage of employment-related expenses paid by the taxpayer during the taxable year. The applicable percentage ranges from 20 percent to 35 percent depending on the taxpayer's adjusted gross income. Section 21(c) limits the amount of employment-related expenses that may be taken into account in determining the credit in any taxable year to $2,400 if there is one qualifying individual and $4,800 if there are two or more qualifying individuals. These amounts are increased, respectively, to $3,000 and $6,000 in taxable years beginning after December 31, 2002, and before January 1, 2011.

Section 21(d) further limits the amount of employment-related expenses that may be taken into account in determining the credit to the lesser of the earned income of the taxpayer or the taxpayer's spouse (if any). The earned income for each month in which a taxpayer's spouse is a full-time student or incapable of self-care is deemed to be $200 (for one qualifying individual) or $400 (for two or more qualifying individuals), increased to $250 and $500 for taxable years beginning after December 31, 2002, and before January 1, 2011.

Section 21(b)(2) defines employment-related expenses as amounts paid for household services and expenses for the care of a qualifying individual that enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer.

Explanation of Provisions

1. Overview

The proposed regulations incorporate many of the rules in the section 44A regulations, but are renumbered, restructured, and revised to improve clarity. The proposed regulations reflect statutory amendments enacted since publication of the section 44A regulations. Accordingly, the proposed regulations include a change in the definition of a qualifying individual, a reduction in the maximum age of a qualifying child from under 15 to under 13, and an increase in the maximum amount of creditable expenses and the monthly amount of deemed earned income of a spouse who is a full-time student or incapable of self-care for taxable years beginning after December 31, 2002, and before January 1, 2011. The proposed regulations provide additional rules that address significant issues that have arisen administratively since publication of the section 44A regulations and expand the number of examples. The substantive revisions, additions, and significant clarifications to the section 44A regulations are described below.

2. Taxable Year of Credit

Section 21 refers interchangeably to expenses "paid" by the taxpayer and expenses "incurred" by the taxpayer. Section 1.44A–1(a)(3) reconciles this use of various tax accounting terms by providing that, regardless of the taxpayer's method of accounting, the credit is allowable only for expenses both "paid" during the taxable year and "incurred" during the taxable year or an earlier taxable year. The proposed regulations restate this rule in plain language and provide that the credit is allowable only in the taxable year in which the services are provided or the taxable year in which the expenses are paid, whichever is later, regardless of the taxpayer's method of accounting.

3. Special Rule for Children of Separated or Divorced Parents

Section 21(e)(5) provides that, in the case of a child of divorced or separated parents, only the custodial parent may claim the credit, regardless of whether the noncustodial parent may claim the dependency exemption under section 152(e). The proposed regulations define custodial parent consistently with section 152(e)(3)(A) as the parent with whom the child shares the same principal place of abode for the greater portion of the calendar year.

4. Employment-Related Expenses

Under section 21(b)(2)(A), expenses are employment-related only if (1) the expenses are primarily for household services or for the care of a qualifying individual, and (2) the taxpayer's purpose in obtaining the services is to enable the taxpayer to be gainfully employed.

a. Nature of the Services Provided

(1) Expenses for Nursery School and Kindergarten

The section 44A regulations provide that expenses are primarily for the care of a qualifying individual if the primary nature of the services is to ensure the qualifying individual's well-being and protection. Amounts paid for food, lodging, clothing, or education are not for the care of a qualifying individual. However, if these services are incidental to and inseparably a part of the care of a qualifying individual, the entire amount of the expense is deemed to be for care.

Section 1.44A–1(c)(3)(i).

Section 1.44A–1(c)(3)(i) provides an example that concludes that the full amount paid to a nursery school is for the care of a qualifying child even though the school furnishes lunch and educational services. Although intended to illustrate the incidental services rule, the example assumes that expenses for nursery school are for care. Section 1.44A–1(c)(3)(i) also provides that expenses for education in the first or higher grade are not for the care of a qualifying individual. The section 44A regulations do not address expenses for kindergarten.

The proposed regulations provide the rule that the expenses of pre-school or similar programs below the kindergarten level are for care and may be employment-related expenses, if otherwise qualified, although education may be a significant part of these programs. The proposed regulations clarify the existing rule that expenses for programs at the level of kindergarten and above, however, are primarily for education and, therefore, are not employment-related expenses.

(2) Specialty Day Camps

Section 21(b)(2)(A) provides that expenses for overnight camps are not employment-related expenses. Expenses for day camps may be employment-related expenses, if otherwise qualified. The IRS has received many inquiries about whether the cost of a day camp that specializes in a particular activity, such as soccer or computers, may be an employment-related expense. To provide certainty for taxpayers and enhance administrability, the proposed regulations provide that the full amount paid for a day camp or similar program may be for the care of a qualifying individual although the camp specializes in a particular activity.

(3) Transportation Expenses

Section 1.44A–1(c)(3)(i) provides that expenses for transportation of a qualifying individual between the taxpayer's household and a place outside the taxpayer's household where care is provided are not for care. The proposed regulations provide that the cost of transportation (such as transportation to a day camp or to an after-school program not on school premises) furnished by a dependent care provider may be an employment-related expense if all other applicable requirements are satisfied.

(4) Other Expenses For Care

Section 1.44A–1(c)(1)(i) provides that employment taxes that a taxpayer pays are employment-related expenses if the related wages are employment-related expenses. Rev. Rul. 76–288 (1976–2 C.B. 83) holds that additional costs for a care

provider's room and board are employment-related expenses. The proposed regulations incorporate these rules. Additionally, the proposed regulations clarify that indirect expenses such as application and agency fees may be employment-related expenses if the taxpayer is required to pay the expenses to obtain the care.

b. Expenses To Enable the Taxpayer To Be Gainfully Employed

Under section 21(b)(2)(A), an expense may be an employment-related expense only if its purpose is to enable the taxpayer to be gainfully employed. Section 1.44A–1(c)(1)(i) provides that an expense must be incurred while the taxpayer is gainfully employed or is in active search of gainful employment. An expense is not employment-related, however, merely because the services are provided while the taxpayer is employed. Rather, the purpose of the expense must be to enable the taxpayer to be gainfully employed.

Rev. Rul. 76–278 (1976–2 C.B. 84) holds that expenses for dependent care services during a taxpayer's 6-month absence from work due to illness do not qualify as employment-related expenses although the taxpayer was gainfully employed during that period. The expenses were not for the purpose of enabling the taxpayer to be gainfully employed because the expenses did not contribute to the taxpayer's ability to be gainfully employed during the absence.

Section 1.44A–1(c)(1)(ii) provides that a taxpayer must allocate on a daily basis expenses that relate to a period during only part of which the taxpayer is gainfully employed or in search of gainful employment. The proposed regulations clarify how this rule applies to temporary absences from work and part-time employment. The proposed regulations provide that, in general, dependent care expenses for a period in which the taxpayer is absent from work (whether paid or unpaid) are not employment-related expenses. However, for administrative convenience, short, temporary absences from work, such as for minor illness or vacation, are disregarded for taxpayers who must pay for dependent care expenses on a weekly or longer basis. Whether an absence is short and temporary depends on the facts and circumstances. The IRS and the Treasury Department request comments on appropriate periods to constitute temporary absence safe harbors.

The proposed regulations provide that, in general, taxpayers who work part-time must allocate expenses between days worked and days not worked. However, taxpayers who work part-time but are required to pay for dependent care expenses on a weekly or longer basis are not required to allocate expenses between days worked and days not worked.

5. Limitations on Amount Creditable

a. Application of Dollar Limitation to Two or More Qualifying Individuals

Under section 21(c), the amount of employment-related expenses that a taxpayer may take into account in any taxable year is $2,400 for one qualifying individual and $4,800 for more than one qualifying individual (increased to $3,000 and $6,000 for taxable years beginning after December 31, 2002, and before January 1, 2011). The proposed regulations clarify that a taxpayer may apply the limitation for two or more qualifying individuals in unequal proportions. Thus, if in taxable year 2004 a taxpayer pays $4,000 of employment-related expenses for the care of one child and $2,000 for another child, the taxpayer may take into account the full $6,000.

b. Earned Income Limitation

Section 21(d) provides that the amount of employment-related expenses that may be taken into account during any taxable year cannot exceed the taxpayer's earned income or, if married, the earned income of the taxpayer's spouse (whichever is less). A spouse who is a full-time student or is incapable of self-care is deemed to have earned income for each month of not less than $200 if there is one qualifying individual or $400 if there are two or more qualifying individuals with respect to the taxpayer for the taxable year. These amounts are increased, respectively, to $250 and $500 for taxable years beginning after December 31, 2002, and before January 1, 2011. Section 1.44A–2(b)(2) provides a definition of *earned income* that is similar to the definition under section 32 (relating to the earned income credit) and the regulations thereunder. Since this regulation was issued, the section 32 definition has changed several times. For ease of administration, the proposed regulations simplify the definition of earned income by cross-referencing the definition under section 32.

Section 1.44A–2(b)(3)(ii) defines a *full-time student* as a student pursuing a full-time course of study, which cannot be exclusively at night. The proposed regulations delete the night school restriction.

6. Cost of Maintaining a Household

For taxable years beginning before January 1, 2005, section 21(a)(1) provides that the credit is available to a taxpayer who maintains a household that includes one or more qualifying individuals. For those years, section 21(e)(1) provides that a taxpayer is treated as maintaining a household for any period only if over half the cost of maintaining the household is furnished by the taxpayer or by the taxpayer and spouse (if any). Section 1.44A–1(d)(3) defines *cost of maintaining a household* substantially identically to the definition in § 1.2–2(d) (relating to the head of household filing status). For simplicity, the proposed regulations cross-reference to the definition of *cost of maintaining a household* in § 1.2–2(d) without regard to the last sentence of that paragraph. In lieu of that sentence, the proposed regulations provide that, for purposes of section 21, the cost of maintaining a household does not include the value of services performed in the household by the taxpayer or a qualifying individual, or expenses paid or reimbursed by another person.

7. Principal Place of Abode

For taxable years beginning after December 31, 2004, the principal place of abode test statutorily replaces the maintaining a household test. Under section 21(b)(1), a qualifying individual must have the same principal place of abode as the taxpayer for more than one-half of the taxable year. For simplicity, the proposed regulations provide that *principal place of abode* has the same meaning as in section 152 and the regulations thereunder.

8. Definition of Marital Status

Under section 21(e)(2), the credit is allowed to married taxpayers only if they file a joint return. Section 21(e)(3) provides that taxpayers who are legally separated under a decree of divorce or separate maintenance are not married. The proposed regulations, in general, adopt the rules of section 7703 and the regulations thereunder to determine whether taxpayers are married for purposes of section 21. However, to maintain continued consistency with section 21(e)(3), the proposed regulations provide, in addition, that taxpayers who are legally separated under a decree of divorce or separate maintenance are not married.

9. Payments to Related Individuals

Section 21(e)(6) provides that payments to a taxpayer's dependent or child under age 19 do not qualify for the credit. Payments to a relative may qualify for the credit if the relative is not a dependent. The proposed regulations clarify that payments to either the

taxpayer's spouse or to a parent of the taxpayer's child who is not the taxpayer's spouse do not qualify for the credit. This rule is consistent with the requirement that a married couple must file a joint return to qualify for the credit, and with the principle that the tax treatment of a payment with respect to a child may be affected by an individual's underlying legal obligation to the child. See section 21(e)(2); compare section 677(b).

10. Proposed Effective Date

The regulations are proposed to apply to taxable years ending after the date the regulations are published as final regulations in the **Federal Register**. However, taxpayers may apply the proposed regulations in taxable years for which the period of limitation on credit or refund under section 6511 has not expired as of May 24, 2006.

11. Effect on Other Documents

When finalized, the regulations would obsolete Rev. Rul. 76–278 (1976–2 C.B. 84) and Rev. Rul. 76–288 (1976–2 C.B. 83).

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Warren Joseph of the Office of Associate Chief Counsel (Income Tax and Accounting). 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Section 1.21–1 also issued under 26 U.S.C. 21(f).

Section 1.21–2 also issued under 26 U.S.C. 21(f).

Section 1.21–3 also issued under 26 U.S.C. 21(f).

Section 1.21–4 also issued under 26 U.S.C. 21(f) * * *

§ 1.21–1 [Redesignated]

Par. 2. Section 1.21–1 is redesignated 1.15–1.

Par. 3. Sections 1.21–1, 1.21–2, 1.21–3, and 1.21–4 are added to read as follows:

§ 1.21–1 Expenses for household and dependent care services necessary for gainful employment.

(a) *In general.* (1) Section 21 allows a credit to a taxpayer against the tax imposed by chapter 1 for employment-related expenses for household services and care (as defined in paragraph (d) of this section) of a qualifying individual (as defined in paragraph (b) of this section). The purpose of the expenses must be to enable the taxpayer to be gainfully employed (as defined in paragraph (c) of this section). For taxable years beginning after December 31, 2004, a qualifying individual must have the same principal place of abode (as defined in paragraph (g) of this section) as the taxpayer for more than one-half of the taxable year. For taxable years beginning before January 1, 2005, the taxpayer must maintain a household (as defined in paragraph (h) of this section) that includes one or more qualifying individuals.

(2) The amount of the credit is equal to the applicable percentage of the employment-related expenses that may be taken into account by the taxpayer during the taxable year (but subject to the limits prescribed in § 1.21–2). *Applicable percentage* means 35 percent reduced by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $15,000, but not less than 20 percent. For example, if a taxpayer's adjusted gross income is $31,850, the applicable percentage is 26 percent.

(3) Expenses may be taken into account, regardless of the taxpayer's method of accounting, only in the taxable year the services are provided or the taxable year the expenses are paid, whichever is later.

(4) The requirements of section 21 and §§ 1.21–1 through 1.21–4 are applied at the time the services are provided, regardless of when the expenses are paid.

(b) *Qualifying individual*—(1) *In general.* For taxable years beginning after December 31, 2004, a qualifying individual is—

(i) The taxpayer's dependent (who is a qualifying child within the meaning of section 152) who has not attained age 13;

(ii) The taxpayer's dependent who is physically or mentally incapable of self-care and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year; or

(iii) The taxpayer's spouse who is physically or mentally incapable of self-care and who has the same principal abode as the taxpayer for more than one-half of the taxable year.

(2) *Taxable years beginning before January 1, 2005.* For taxable years beginning before January 1, 2005, a qualifying individual is—

(i) The taxpayer's dependent for whom the taxpayer is entitled to a deduction for a personal exemption under section 151(c) and who is under age 13;

(ii) The taxpayer's dependent who is physically or mentally incapable of self-care; or

(iii) The taxpayer's spouse who is physically or mentally incapable of self-care.

(3) *Qualification on a daily basis.* The status of an individual as a qualifying individual is determined on a daily basis. An individual is not a qualifying individual on the day the status terminates.

(4) *Physical or mental incapacity.* An individual is physically or mentally incapable of self-care if, as a result of a physical or mental defect, the

individual is incapable of caring for the individual's hygiene or nutritional needs, or requires full-time attention of another person for the individual's own safety or the safety of others. The inability of an individual to engage in any substantial gainful activity or to perform the normal household functions of a homemaker or care for minor children by reason of a physical or mental condition does not of itself establish that the individual is physically or mentally incapable of self-care.

(5) *Special test for divorced or separated parents*—(i) *Scope.* This paragraph (b)(5) applies to a child (as defined in section 152(f)(1) for taxable years beginning after December 31, 2004, and in section 151(c)(3) for taxable years beginning before January 1, 2005) who—

(A) Is under age 13 or is physically or mentally incapable of self-care;

(B) Receives over one-half of his or her support during the calendar year from one or both parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement; and

(C) Is in the custody of one or both parents for more than one-half of the calendar year.

(ii) *Custodial parent allowed the credit.* A child to whom this paragraph (b)(5) applies is the qualifying individual of only one parent in any taxable year and is the qualifying child of the custodial parent even if the noncustodial parent may claim the dependency exemption for that child for that taxable year. See section 152(e). The custodial parent is the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year. See section 152(e)(3)(A).

(c) *Gainful employment*—(1) *In general.* Expenses are employment-related expenses only if they are for the purpose of enabling the taxpayer to be gainfully employed. The expenses must be for the care of a qualifying individual or household services provided during periods in which the taxpayer is gainfully employed or is in active search of gainful employment. Employment may consist of service within or outside the taxpayer's home and includes self-employment. An expense is not employment-related merely because it is paid or incurred while the taxpayer is gainfully employed. The purpose of the expense must be to enable the taxpayer to be gainfully employed. Whether the purpose of an expense is to enable the taxpayer to be gainfully employed depends on the facts and circumstances of the particular case. Work as a volunteer or for a nominal consideration is not gainful employment.

(2) *Determination of period of employment on a daily basis*—(i) *In general.* Expenses paid for a period during only part of which the taxpayer is gainfully employed or in active search of gainful employment must be allocated on a daily basis.

(ii) *Exception for short temporary absences.* A taxpayer who is gainfully employed and who pays for dependent care expenses on a weekly, monthly, or annual basis is not required to allocate expenses during short, temporary absences from work, such as for vacation or minor illness. Whether an absence is a short, temporary absence is determined based on all the facts and circumstances.

(iii) *Part-time employment.* A taxpayer who is employed part-time generally must allocate expenses for dependent care between days worked and days not worked. However, if a taxpayer employed part time is required to pay for dependent care on a periodic basis (such as weekly or monthly) that includes both days worked and days not worked, the taxpayer is not required to allocate the expenses. A day on which the taxpayer works at least 1 hour is a day of work.

(3) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. B, the custodial parent of two qualifying children, hires a housekeeper for a monthly salary to care for the children while B is gainfully employed. B becomes ill and as a result is absent from work for 4 months. B continues to pay the housekeeper to care for the children while B is absent from work. During this 4-month period, B performs no employment services, but receives payments under her employer's wage continuation plan. Although B may be considered to be gainfully employed during her absence from work, the absence is not a short, temporary absence within the meaning of paragraph (c)(2)(ii) of this section, and her payments for household and dependent care services during the period of illness are not for the purpose of enabling her to be gainfully employed. B's expenses are not employment-related expenses, and she may not take the expenses into account under section 21.

Example 2. C works 5 days per week and his child attends a dependent care center (that complies with all state and local requirements) to enable C to be gainfully employed. The dependent care center requires payment for periods of no less than 1 week. C takes 2 days off from work as vacation days. Under paragraph (c)(2)(ii) of this section, C is absent from work on a short, temporary basis, and is not required to allocate expenses between days working and days not working. The entire fee for that week may be an employment-related expense under section 21.

Example 3. D works 3 days per week and her child attends a dependent care center (that complies with all state and local requirements) to enable her to be gainfully employed. The dependent care center allows payment for any 3 days per week for $150 or 5 days per week for $250. D enrolls her child for 5 days per week. Under paragraph (c)(2)(iii) of this section, D must allocate her expenses for dependent care between days worked and days not worked. Three-fifths of the $250, or $150 per week, may be an employment-related expense under section 21.

Example 4. The facts are the same as in *Example 3*, except that the dependent care center does not offer a 3-day option. The entire $250 weekly fee may be an employment-related expense under section 21.

(d) *Care of qualifying individual and household services*—(1) *In general.* To qualify for the dependent care credit, expenses must be for the care of a qualifying individual. Expenses are for the care of a qualifying individual if the primary function is to assure the individual's well-being and protection. Not all expenses relating to a qualifying individual are provided for the individual's care. Amounts paid for food, lodging, clothing, or education are not for the care of a qualifying individual. If, however, the care is provided in such a manner that the expenses cover other goods or services that are incidental to and inseparably a part of the care, the full amount is for care.

(2) *Allocation of expenses.* If an expense is partly for household services or for the care of a qualifying individual and partly for other goods or services, a reasonable allocation must be made. Only so much of the expense that is allocable to the household services or care of a qualifying individual is an employment-related expense.

An allocation must be made if a housekeeper or other domestic employee performs household duties and cares for the qualifying children of the taxpayer and also performs other services for the taxpayer. No allocation is required, however, if the expense for the other purpose is minimal or insignificant or if an expense is partly attributable to the care of a qualifying individual and partly to household services.

(3) *Household services.* Expenses for household services may be employment-related expenses if the services are provided in connection with the care of a qualifying individual. The household services must be the performance in and about the taxpayer's home of ordinary and usual services

necessary to the maintenance of the household and attributable to the care of the qualifying individual. Services of a housekeeper are household services within the meaning of this paragraph (d)(3) if part of those services is provided to the qualifying individual. Such services as are provided by chauffeurs, bartenders, or gardeners are not household services.

(4) *Manner of providing care.* The manner of providing the care need not be the least expensive alternative available to the taxpayer. The cost of a paid caregiver may be an expense for the care of a qualifying individual even if another caregiver is available at no cost.

(5) *School or similar program.* Expenses for a child in nursery school, pre-school, or similar programs for children below the level of kindergarten are for the care of a qualifying individual and may be employment-related expenses. Expenses for a child in kindergarten or a higher grade are not for the care of a qualifying individual. However, expenses for before- or after-school care of a child in kindergarten or a higher grade may be for the care of a qualifying individual.

(6) *Overnight camps.* Expenses for overnight camps are not employment-related expenses.

(7) *Day camps.* The cost of a day camp or similar program may be for the care of a qualifying individual and an employment-related expense, without allocation under paragraph (d)(2) of this section, even if the day camp specializes in a particular activity.

(8) *Transportation.* The cost of transportation by a dependent care provider of a qualifying individual to or from a place where care of that qualifying individual is provided may be for the care of the qualifying individual. The cost of transportation not provided by a dependent care provider is not for the care of the qualifying individual.

(9) *Employment taxes.* Taxes under section 3111 (relating to the Federal Insurance Contributions Act) and 3301 (relating to the Federal Unemployment Tax Act) and similar state payroll taxes are employment-related expenses if paid in respect of wages that are employment-related expenses.

(10) *Room and board.* The additional cost of providing room and board for a caregiver over usual household expenditures may be an employment-related expense.

(11) *Indirect expenses.* Expenses that relate to but are not directly for the care of a qualifying individual, such as application fees, agency fees, and deposits, may be for the care of a qualifying individual and may be employment-related expenses if the taxpayer is required to pay the expenses to obtain the related care. However, forfeited deposits and other payments are not for the care of a qualifying individual if care is not provided.

(12) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example 1. To be gainfully employed, E sends his 3-year old child to a pre-school. The pre-school provides lunch and snacks. Under paragraph (d)(1) of this section, E is not required to allocate expenses between care and the lunch and snacks because the lunch and snacks are incidental to and inseparably a part of the care. Therefore, E may treat the full amount paid to the pre-school as for the care of his child.

Example 2. F, a member of the armed forces, is ordered to a combat zone. To be able to comply with the orders, F places her 10-year old child in boarding school. The school provides education, meals, and housing to F's child in addition to care. Under paragraph (d)(2) of this section, F must allocate the cost of the boarding school between expenses for care and expenses for education and other services not constituting care. Only the part of the cost of the boarding school that is for the care of F's child is an employment-related expense under section 21.

Example 3. To be gainfully employed, G employs a full-time housekeeper to care for G's two children, aged 9 and 13 years. The housekeeper regularly performs household services of cleaning and cooking and drives G to and from G's place of employment, a trip of 15 minutes each way. Under paragraph (d)(3) of this section, the chauffeur services are not household services. G is not required to allocate a portion of the expense of the housekeeper to the chauffeur services, however, because the chauffeur services are minimal and insignificant. Further, no allocation under paragraph (d)(2) of this section is required to determine the portion of the expenses attributable to the care of the 13-year old child (not a qualifying individual) because the household expenses are in part attributable to the care of the 9-year old child. Accordingly, the entire expense of employing the housekeeper is an employment-related expense. The amount that G may take into account as an employment-related expense under section 21, however, is limited to the amount allowable for one qualifying individual.

Example 4. To be gainfully employed, H sends her 9-year old child to a summer day camp that specializes in computer instruction and activities. Under paragraph (d)(7) of this section, the full cost of the summer day camp may be for care although it specializes in a particular activity, computers.

Example 5. In 2004, J pays a fee to an agency to obtain the services of an au pair to care for J's qualifying children to enable J to be gainfully employed. The au pair begins caring for J's children in 2005. Under paragraph (d)(11) of this section, the fee paid in 2004 may be an employment-related expense. However, under paragraph (a)(3) of this section, J may not take the expense into account under section 21 until 2005, when the au pair first provides the care.

Example 6. K places a deposit with a pre-school to reserve a place for her child. K sends the child to another pre-school and forfeits the deposit. Under paragraph (d)(11) of this section, the forfeited deposit is not an employment-related expense.

(e) *Services outside the taxpayer's household*—(1) *In general.* The credit is allowable for expenses for services performed outside the taxpayer's household only if the care is for one or more qualifying individuals who are described in this section at—

(i) Paragraph (b)(1)(i) or (b)(2)(i); or

(ii) Paragraph (b)(2)(ii) or (b)(2)(iii) and regularly spend at least 8 hours each day in the taxpayer's household.

(2) *Dependent care centers*—(i) *In general.* The credit is allowable for services provided by a dependent care center only if—

(A) The center complies with all applicable laws and regulations, if any, of a state or local government, such as state or local licensing requirements and building and fire code regulations; and

(B) The requirements provided in this paragraph (e) are met.

(ii) *Definition.* The term *dependent care center* means any facility that provides full-time or part-time care for more than six individuals (other than individuals who reside at the facility) on a regular basis during the taxpayer's taxable year, and receives a fee, payment, or grant for providing services for the individuals (regardless of whether the facility is operated for profit). For purposes of the preceding sentence, a facility is presumed to provide full-time or part-time care for six or fewer individuals on a regular basis during the taxpayer's taxable year if the facility has six or fewer individuals (including the taxpayer's qualifying individual) enrolled for full-time or part-time care on the day the qualifying individual is enrolled in the facility (or on the first day of the taxable year the qualifying individual attends the facility if the qualifying individual was enrolled in the facility in the preceding taxable year) unless the Internal Revenue Service demonstrates that the facility provides full-time or part-time care for more than six individuals on a regular basis during the taxpayer's taxable year.

(f) *Reimbursed expenses.* Employment-related expenses for which the taxpayer is reimbursed (for example, under a dependent care assistance program) may not be taken into account for purposes of the credit.

(g) *Principal place of abode.* For purposes of this section, the term

principal place of abode has the same meaning as in section 152 and the regulations thereunder.

(h) *Maintenance of a household*—(1) *In general.* For taxable years beginning before January 1, 2005, the credit is available only to taxpayers who maintain households that include one or more qualifying individuals. A taxpayer maintains a household for the taxable year (or lesser period) only if the taxpayer (and spouse, if applicable) occupies the household and furnishes over one-half of the cost for the taxable year (or lesser period) of maintaining the household. The household must be the principal place of abode (within the meaning of section 152 and the regulations thereunder) for the taxable year of the taxpayer and the qualifying individual or individuals described in paragraph (b) of this section.

(2) *Cost of maintaining a household.* (i) Except as provided in paragraph (h)(2)(ii) of this section, for purposes of this section, the term cost of maintaining a household has the same meaning as in § 1.2–2(d) without regard to the last sentence thereof.

(ii) The cost of maintaining a household does not include the value of services performed in the household by the taxpayer or by a qualifying individual described in paragraph (b) of this section or any expense paid or reimbursed by another person.

(3) *Monthly proration of annual costs.* In determining the cost of maintaining a household for a period of less than a taxable year, the cost for the entire taxable year must be prorated on the basis of the number of calendar months within that period. A period of less than a calendar month is treated as a full calendar month.

(4) *Two or more families.* If two or more families occupy living quarters in common, each of the families is treated as maintaining a separate household. A taxpayer is maintaining a household if the taxpayer provides more than one-half of the cost of maintaining the separate household. For example, if two unrelated taxpayers with their respective children occupy living quarters in common and each taxpayer pays more than one-half of the household costs for each respective family, each taxpayer is treated as maintaining a household.

(i) Reserved.

(j) *Expenses qualifying as medical expenses*—(1) *In general.* A taxpayer may not take an amount into account as both an employment-related expense under section 21 and an expense for medical care under section 213.

(2) *Examples.* The provisions of this paragraph (j) are illustrated by the following examples:

Example 1. During 2004, L has $6,500 of employment-related expenses for the care of his child who is physically incapable of self-care. The expenses are for services performed in L's household that also qualify as expenses for medical care under section 213. Of the total expenses, L may take into account $3,000 under section 21. L may deduct the balance of the expenses, or $3,500, as expenses for medical care under section 213 to the extent the expenses exceed 7.5 percent of L's adjusted gross income.

Example 2. The facts are the same as in *Example 1*, however, L first takes into account the $6,500 of expenses under section 213. L deducts $500 as an expense for medical care, which is the amount by which the expenses exceed 7.5 percent of his adjusted gross income. L may not take into account the $6,000 balance as employment-related expenses under section 21 because he has taken the full amount of the expenses into account in computing the amount deductible under section 213.

(k) *Substantiation.* A taxpayer claiming a credit for employment-related expenses must maintain adequate records or other sufficient evidence to substantiate the expenses in accordance with section 6001 and the regulations thereunder.

(l) *Effective date.* This section and §§ 1.21–2 through 1.21–4 apply to taxable years ending after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may apply this section and §§ 1.21–2 through 1.21–4 in taxable years for which the period of limitation on credit or refund under section 6511 has not expired as of May 24, 2006.

§ 1.21–2 Limitations on amount creditable.

(a) *Annual dollar limitation.* (1) The amount of employment-related expenses that may be taken into account under § 1.21–1(a) for any taxable year cannot exceed—

(i) $2,400 ($3,000 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there is one qualifying individual with respect to the taxpayer at any time during the taxable year; or

(ii) $4,800 ($6,000 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there are two or more qualifying individuals with respect to the taxpayer at any time during the taxable year.

(2) The amount determined under paragraph (a)(1) of this section is reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(3) A taxpayer may take into account the total amount of employment-related expenses that do not exceed the annual dollar limitation although the amount of employment-related expenses attributable to one qualifying individual exceeds 50 percent of the limitation. For example, a taxpayer with expenses in 2004 of $4,000 for one qualifying individual and $1,500 for a second qualifying individual may take into account the full $5,500.

(4) A taxpayer is not required to prorate the annual dollar limitation if a qualifying individual ceases to qualify (for example, by turning age 13) during the taxable year. However, the taxpayer may take into account only expenses that qualify under § 1.21–1(a)(3) before the disqualifying event.

(b) *Earned income limitation*—(1) *In general.* The amount of employment-related expenses that may be taken into account under section 21 for any taxable year cannot exceed—

(i) For a taxpayer who is not married at the close of the taxable year, the taxpayer's earned income for the taxable year; or

(ii) For a taxpayer who is married at the close of the taxable year, the lesser of the taxpayer's earned income or the earned income of the taxpayer's spouse for the taxable year.

(2) *Determination of spouse.* For purposes of this paragraph (b), a taxpayer must take into account only the earned income of a spouse to whom the taxpayer is married at the close of the taxable year. The spouse's earned income for the entire taxable year is taken into account, however, even though the taxpayer and the spouse were married for only part of the taxable year. The taxpayer is not required to take into account the earned income of a spouse who died or was divorced or separated from the taxpayer during the taxable year. See § 1.21–3(b) for rules providing that certain married taxpayers legally separated or living apart are treated as not married.

(3) *Definition of earned income.* For purposes of this section, the term *earned income* has the same meaning as in section 32(c)(2) and the regulations thereunder.

(4) *Attribution of earned income to student or incapacitated spouse.* (i) For purposes of this section, a spouse is deemed, for each month during which the spouse is a full-time student or is a qualifying individual described in § 1.21–1(b)(1)(iii) or § .21–1(b)(2)(iii), to be gainfully employed and to have earned income of not less than—

(A) $200 ($250 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there is one qualifying individual with respect to the

taxpayer at any time during the taxable year; or

(B) $400 ($500 for taxable years beginning after December 31, 2002, and before January 1, 2011) if there are two or more qualifying individuals with respect to the taxpayer at any time during the taxable year.

(ii) For purposes of this paragraph (b)(4), a full-time student is an individual who is enrolled at and attends an educational institution during each of 5 calendar months of the taxpayer's taxable year for the number of course hours considered to be a full-time course of study. The enrollment for 5 calendar months need not be consecutive. See section 152(f)(2) (for taxable years beginning after December 31, 2004), or section 151(c)(4) (for taxable years beginning before January 1, 2005), and the regulations thereunder.

(iii) Earned income may be attributed under this paragraph (b)(4), in the case of any husband and wife, to only one spouse in any month.

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

Example 1. In 2004, M, who is married, pays employment-related expenses of $5,000 for the care of one qualifying individual. M's earned income for the taxable year is $40,000 and her husband's earned income is $2,000. M did not exclude any dependent care assistance under section 129. Under paragraph (b)(1) of this section, M may take into account under section 21 only the amount of employment-related expenses that does not exceed the lesser of her earned income or the earned income of her husband, or $2,000.

Example 2. The facts are the same as in *Example 1* except that M's husband is a full-time student for 9 months of the taxable year and has no earned income. Under paragraph (b)(4) of this section, M's husband is deemed to have earned income of $2,250. M may take into account $2,250 of employment-related expenses under section 21.

Example 3. For all of 2004, N is a full-time student and O, N's husband, is an individual who is incapable of self-care (as defined in § 1.21–1(b)(1)(iii)). N and O have no earned income and pay expenses of $5,000 for O's care. Under paragraph (b)(4) of this section, either N or O may be deemed to have $3,000 of earned income. However, earned income may be attributed to only one spouse under paragraph (b)(4)(iii) of this section. Under the limitation in paragraph (b)(1)(ii) of this section, the lesser of N's or O's earned income is zero. N and O may not take the expenses into account under section 21.

(d) *Cross-reference.* For an additional limitation on the credit under section 21, see section 26.

§ 1.21–3 Special rules applicable to married taxpayers.

(a) *Joint return requirement.* No credit is allowed under section 21 for taxpayers who are married (within the meaning of section 7703 and the regulations thereunder) at the close of the taxable year unless the taxpayer and spouse file a joint return for the taxable year. See section 6013 and the regulations thereunder relating to joint returns of income tax by husband and wife.

(b) *Taxpayers treated as not married.* The requirements of paragraph (a) of this section do not apply to a taxpayer who is legally separated under a decree of divorce or separate maintenance or who is treated as not married under section 7703(b) and the regulations thereunder (relating to certain married taxpayers living apart). A taxpayer who is treated as not married under this paragraph (b) is not required to take into account the earned income of the taxpayer(s) spouse for purposes of applying the earned income limitation on the amount of employment-related expenses under § 1.21–2(b).

(c) *Death of married taxpayer.* If a married taxpayer dies during the taxable year and the survivor may make a joint return with respect to the deceased spouse under section 6013(a)(3), the credit is allowed for the year only if a joint return is made. If, however, the surviving spouse remarries before the end of the taxable year in which the deceased spouse dies, a credit may be allowed on the decedent spouse(s separate return.

§ 1.21–4 Payments to certain related individuals.

(a) *In general.* A credit is not allowed under section 21 for any amount paid by the taxpayer to an individual—

(1) For whom a deduction under section 151(c) (relating to deductions for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse for the taxable year;

(2) Who is a child of the taxpayer (within the meaning of section 152(f)(1) for taxable years beginning after December 31, 2004, and section 151(c)(3) for taxable years beginning before January 1, 2005) and is under age 19 at the close of the taxable year;

(3) Who is the spouse of the taxpayer at any time during the taxable year; or

(4) Who is the parent of the taxpayer's child who is a qualifying individual described in § 1.21–1(b)(1)(i) or § 1.21–1(b)(2)(i).

(b) *Payments to partnerships or other entities.* In general, paragraph (a) of this section does not apply to services performed by partnerships or other entities. If, however, the partnership or other entity is established or maintained primarily to avoid the application of paragraph (a) of this section to permit the taxpayer to claim the credit, for purposes of section 21, the payments of employment-related expenses are treated as made directly to each partner or owner in proportion to that partner's or owner's ownership interest. Whether a partnership or other entity is established or maintained to avoid the application of paragraph (a) of this section is determined based on the facts and circumstances, including whether the partnership or other entity is established for the primary purpose of caring for the taxpayer's qualifying individual or providing household services to the taxpayer.

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

Example 1. P pays $5,000 to her mother for the care of P's 5-year old child during 2004. The expenses otherwise qualify as employment-related expenses. P's mother is not her dependent. P may take into account under section 21 the amounts paid to her mother for the care of P's child.

Example 2. Q, who is divorced and has custody of his 5-year old child, pays $6,000 during 2004 to R, who is his ex-wife and the child's mother, for the care of the child. The expenses otherwise qualify as employment-related expenses. Under paragraph (a)(4) of this section, Q may not take into account under section 21 the amounts paid to R because R is the child's mother.

Example 3. The facts are the same as in Example 2, except that R is not the mother of Q's child. Q may take into account under section 21 the amounts paid to R.

§§ 1.44A–1 through 1.44A–4 [Removed]

Par. 4. Sections 1.44A–1, 1.44A–2, 1.44A–3, and 1.44A–4 are removed.

§ 1.214–1 [Removed]

Par. 5. Section 1.214–1 is removed.

§§ 1.214A–1 through 1.214A–5 [Removed]

Par. 6. Sections 1.214A–1, 1.214A–2, 1.214A–3, 1.214A–4, and 1.214A–5 are removed.

PART 602–OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.44A–1 and 1.44A–3.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–7390 Filed 5–23–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1350

[Docket No. NHTSA–2006–23700]

RIN 2127–AJ86

Motorcyclist Safety Grant Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes implementing regulations for the Motorcyclist Safety grant program authorized under section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) for fiscal years 2006 through 2009. Eligibility for the section 2010 grants is based on 6 statutorily specified grant criteria.

To be eligible to receive an initial section 2010 grant, a State must demonstrate compliance with at least 1 of the 6 grant criteria. To be eligible to receive a grant in subsequent fiscal years, a State must demonstrate compliance with at least 2 of the 6 grant criteria. This NPRM proposes minimum requirements a State must meet and procedures a State must follow to receive a section 2010 motorcyclist safety grant.

DATES: Written comments may be submitted to this agency and must be received by June 23, 2006.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For program issues: Marti Miller, Office of Injury Control Operations and Resources, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–2121.

For legal issues: Allison Rusnak, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:

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I. Background

An estimated 128,000 motorcyclists have died in traffic crashes since the enactment of the Highway Safety Act of 1966. There are nearly 6 million motorcycles [1] registered in the United States. Motorcycles made up more than 2 percent of all registered vehicles in the United States in 2004 and accounted for an estimated 0.3 percent of all vehicle miles traveled. Per vehicle mile traveled in 2004, motorcyclists were about 34 times more likely to die and 8 times more likely to be injured in a motor vehicle traffic crash than passenger car occupants. Motorcycle rider fatalities reached a high of 5,144 in 1980. After dropping to a low of 2,116 in 1997, motorcycle rider fatalities have increased for 7 consecutive years, reaching a total of 4,008 in 2004, the last full year for which data are available—an increase of 89 percent.

Impaired motorcycle operation contributes considerably to motorcycle fatalities and injuries. In fatal crashes in 2004, a higher percentage of motorcycle operators than any other type of motor vehicle operator had blood alcohol concentration (BAC) levels of .08 grams per deciliter (g/dL) or higher. The percentages for vehicle operators involved in fatal crashes were 27 percent for motorcycles, as compared to 22 percent for passenger cars, 21 percent for light trucks, and 1 percent for large trucks.

NHTSA traditionally promotes motorcycle safety through highway safety grants and technical assistance to States, data collection and analysis, research, and safety standards designed to contribute to the safe operation of a motorcycle. NHTSA has allocated resources to support these broad initiatives since the agency's inception in the late 1960s and has collected and analyzed data on motorcycle safety since 1975.

II. Summary of SAFETEA–LU Requirements

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted into law (Pub. L. 109–59). Section 2010 of SAFETEA–LU authorizes the Secretary of Transportation to "make grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists." Specifically, SAFETEA–LU authorizes the Secretary to make motorcyclist safety grants available to States that meet certain criteria. Eligibility for the section 2010 grants is based on 6 grant criteria: (1) Motorcycle Rider Training Courses; (2) Motorcyclists Awareness Program; (3) Reduction of Fatalities and Crashes Involving Motorcycles; (4) Impaired Driving Program; (5) Reduction of Fatalities and Accidents Involving Impaired Motorcyclists; and (6) Use of Fees Collected from Motorcyclists for Motorcycle Programs.

SAFETEA–LU specifies that to qualify initially for a section 2010 grant, a State must demonstrate compliance with at least 1 of the 6 grant criteria. To qualify for a grant in subsequent fiscal years, a State must demonstrate compliance with at least 2 of the 6 grant criteria. Under this new four-year grant program, which covers fiscal years 2006 through 2009, a State may use grant funds for a variety of motorcyclist safety training and motorcyclist awareness programs or it may suballocate funds to a nonprofit organization incorporated in the State to carry out grant activities. The term "State" has the same meaning as in section 101(a) of title 23, United States

[1] For the purposes of the section 2010 grants, NHTSA proposes that the term "motorcycle" will have the same meaning as in 49 CFR 571.3, "a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground."

Code, and includes any of the fifty States, the District of Columbia and Puerto Rico.

NHTSA is optimistic that the new section 2010 grant program will lead to improvements in motorcycle rider training and motorcyclist awareness and a reduction in impaired motorcycle operation as well as a decrease in fatalities and injuries resulting from crashes involving motorcycles. The statutory criteria are set forth more fully below, followed by the agency's proposed requirements to implement each of these criteria.

III. Proposed Qualification Requirements

A. Motorcycle Rider Training Courses

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have "an effective motorcycle rider training course that is offered throughout the State, provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and that may include innovative training opportunities to meet unique regional needs."

Agency's Proposal (23 CFR 1350.4(a))

To implement this criterion, the agency proposes that a State, at a minimum: (1) Use a training curriculum that is approved by the designated State authority having jurisdiction over motorcyclist safety issues, that includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists, and that may include innovative training opportunities to meet unique regional needs; (2)(a) Offer at least one motorcycle rider training course in a majority of the State's counties or political subdivisions, or (b) Offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles; (3) To teach the curriculum, use motorcycle rider training instructors who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and (4) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

Basis for Proposal

In developing the proposed requirements for this criterion, the agency was guided by the specific language of SAFETEA–LU as well as by established motorcycle safety program guidance contained in the agency's highway safety guideline on motorcycle safety. Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. The motorcycle safety guideline reflects the sound science and the experience of States in motorcycle safety programs and offers direction to States in formulating their highway safety plans supported with section 402 grant funds. The guideline provides a framework for developing a balanced highway safety program and for assessing the effectiveness of motorcycle safety efforts.

In order to provide the formal program of instruction in crash avoidance and other safety-oriented operational skills required by section 2010, NHTSA proposes that the State must use a curriculum approved by the designated State authority having jurisdiction over motorcyclist safety issues. Although SAFETEA–LU uses the term "motorcycle rider training" for this criterion, section 2010(f)(1) of SAFETEA–LU defines the term "motorcyclist safety training" as a "formal program of instruction * * * approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or motorcycle advisory council appointed by the Governor of the State." Because of the similarity of the terms "motorcycle rider training" and "motorcyclist safety training" and the common use of the words "formal program of instruction" in both sections 2010(d)(2)(A) and (f)(1), NHTSA believes Congress intended the terms to apply synonymously, and that Congress defined "motorcyclist safety training" in order to give additional meaning to the motorcycle rider training courses criterion.

Additionally, because State motorcycle rider training courses typically include both in-class and on-the-motorcycle training and NHTSA believes both are critical to the effectiveness of a motorcycle rider training course, the agency proposes that the curriculum must include both types of training.

To effectuate the SAFETEA–LU requirement that a State offer its effective motorcycle rider training course throughout the State, NHTSA proposes that a State must offer at least one motorcycle rider training course in a majority of the State's counties or political subdivisions or offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles. For the purposes of this criterion, majority would mean greater than 50 percent. NHTSA recognizes that locations for motorcycle rider training courses may vary widely from State to State. Accordingly, the agency believes this proposal would provide flexibility to States seeking to qualify under this criterion. The agency notes that because we read the statutory language ("an effective motorcycle rider training course that is *offered* throughout the State") (emphasis added) to contemplate that a State already offer motorcycle rider training courses when applying for these grants, the proposal would require States to submit information regarding the motorcycle rider training courses offered in the 12 months preceding the due date of the grant application.

Because about half of all motorcycle-related fatalities occur in rural areas, NHTSA believes it is important that training reach motorcyclists in rural areas. Accordingly, in selecting counties or political subdivisions in which to conduct training, NHTSA encourages States to establish training courses and course locations that are accessible to both rural and urban residents. A State may offer motorcycle rider training courses throughout the State at established training centers, using mobile training units, or any other method defined as effective by the designated State authority having jurisdiction over motorcyclist safety issues.

Next, NHTSA proposes that motorcycle rider training instructors be certified by either the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability. Requiring instructors to attain certification in order to teach a motorcycle rider training course would contribute to the course's effectiveness by ensuring that instructors have obtained an appropriate level of expertise qualifying them to teach a course.

Finally, NHTSA proposes that to qualify for a grant under this criterion, a State must carry out quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State. NHTSA believes quality control procedures promote course effectiveness by encouraging improvements to courses when needed. The agency's proposal does not specify the quality control

procedures a State must use. Instead, the proposal would require the State to describe what quality control procedures it uses and the changes the State made to improve courses. At minimum, a State should gather evaluative information on an ongoing basis (*e.g.*, by conducting site visits or gathering student feedback) and take actions to improve courses based on the information collected.

Demonstrating Compliance (23 CFR 1350.4(a)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) A copy of the official State document identifying the designated State authority having jurisdiction over motorcyclist safety issues; (2) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; (3)(a) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application, or (b) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records; (4) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and (5) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State (*e.g.*, conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

To demonstrate compliance with this criterion for the second and subsequent fiscal years it seeks to qualify, a State would submit only information documenting any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to offer the motorcycle rider training course in the same manner.

B. Motorcyclists Awareness Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have "an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists."

"Motorcyclist Awareness" is defined in section 2010(f)(2) of SAFETEA–LU as "individual or collective awareness of—(A) the presence of motorcycles on or near roadways; and (B) safe driving practices that avoid injury to motorcyclists."

"Motorcyclist Awareness Program" is defined in section 2010(f)(3) of SAFETEA–LU as "an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State."

Agency's Proposal (23 CFR 1350.4(b))

To implement this criterion, the agency proposes that a State have a motorcyclist awareness program that, at a minimum: (1) Is developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues; (2) Uses State data to identify and prioritize the State's motorcycle safety problem areas; (3) Encourages collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and (4) Incorporates a strategic communications plan that supports the overall policy and program, is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest, includes marketing and educational efforts to enhance motorcyclist awareness, and uses a mix of communication mechanisms to draw attention to the problem.

Basis for Proposal

As with the Motorcycle Rider Training Course criterion, in developing the proposed requirements for this Motorcyclists Awareness Program criterion, the agency was guided by the specific language of SAFETEA–LU as well as by the highway safety guideline on motorcycle safety.

First, the definition of "motorcyclist awareness program" in SAFETEA–LU specifies that a program under this criterion be developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

Before a problem can be effectively addressed, the agency believes that problem identification and prioritization must be performed. Therefore, NHTSA proposes to include as an element under this criterion problem identification and prioritization through the use of State data.

Next, in order to add to the effectiveness of a motorcyclist awareness program, NHTSA proposes that a State's motorcyclist awareness program encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues.

Additionally, NHTSA proposes that because this criterion contemplates an informational or public awareness program to enhance motorist awareness of the presence of motorcyclists and because awareness efforts rely heavily on communication strategies and implementation, a State's motorcyclist awareness program should incorporate a strategic communications plan to support the overall policy and program. To ensure that the program is conducted statewide, the agency proposes that the communications plan be designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes). For the purposes of this criterion, majority would mean greater than 50 percent. Finally, based on NHTSA's experience with dispersing traffic safety messages, the agency proposes that a communications plan should include marketing and educational efforts and should use a variety of communication mechanisms to increase awareness of a problem.

Demonstrating Compliance (23 CFR 1350.4(b)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues; (2) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues; (3) Data used to identify and prioritize the State's motorcycle safety problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision (such data would be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State would provide data from calendar year 2005)); (4) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and (5) A copy of the strategic communications plan showing that it supports the overall policy and program, is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes), includes marketing and educational efforts to enhance motorcyclist awareness, and uses a mix of communication mechanisms to draw attention to the problem (*e.g.*, newspapers, billboard advertisements, e-mail, posters, flyers, mini-planners, computer-led and instructor-led training sessions).

To demonstrate compliance with this criterion for the second and subsequent fiscal years it seeks to qualify, a State would submit only information documenting any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to implement the motorcyclists awareness program in the same manner.

C. Reduction of Fatalities and Crashes Involving Motorcycles

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to experience "a reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations)."

Agency's Proposal (23 CFR 1350.4(c))

The agency proposes that to satisfy this criterion in any fiscal year, a State must: (1) Based on *final* Fatality Analysis Reporting System (FARS) data, experience at least a reduction of one in the number of motorcycle fatalities for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and* (2) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

Using the following data sources, NHTSA would perform the computations to determine a State's compliance with this criterion:

- The agency proposes that "preceding calendar year" would mean the calendar year that precedes the beginning of the fiscal year of the grant by one year. The term appears in the agency's proposal to identify the source year of data to be used for determining a State's compliance with this criterion. For example, for grant applications in fiscal year 2006, which began in October 2005, the preceding calendar year would be the 2004 calendar year and final FARS data, State crash data and FHWA motorcycle registration data from the "preceding calendar year" and the "calendar year immediately prior to the preceding calendar year" would, therefore, be such data from calendar years 2004 and 2003.
- NHTSA proposes to use Federal Highway Administration (FHWA) motorcycle registration data to determine motorcycle registrations under this criterion.
- The agency proposes to use State crash data provided by the State to determine the number of motor vehicle crashes involving motorcycles.

Basis for Proposal

NHTSA believes that using the *final* FARS data will ensure that the most accurate fatality numbers are used to determine each State's compliance with this criterion. The FARS contains data derived from a census of fatal traffic crashes within the 50 States, the District of Columbia, and Puerto Rico. All FARS data on fatal motor vehicle crashes are gathered from the States' own documents and coded into FARS formats with common standards. Final FARS data provide the most comprehensive and quality-controlled fatality data.

The agency's proposed definition of "preceding calendar year" would ensure that the latest available *final* FARS data are used when a State applies for a grant under this criterion. For consistency in determining whether a State meets both statutory prongs of this criterion by experiencing both a reduction in the number of motorcycle fatalities *and* a reduction in the rate of motor vehicle crashes involving motorcycles, the proposed definition of "preceding calendar year" would apply to the rate calculation portion of this criterion as well. For fiscal year 2006 grants, NHTSA would compare 2003 final FARS data, State crash data and FHWA motorcycle registration data with 2004 data under the proposed rule.

NHTSA proposes to use FHWA motorcycle registration data because it contains reliable motorcycle registration data compiled in a single source for all 50 States, the District of Columbia, and Puerto Rico. The FHWA reports and releases motorcycle registration data annually.

Requiring a whole number reduction (*i.e.*, at least a 1.0 reduction) is consistent with SAFETEA–LU's requirement that there be a reduction in the number of fatalities and the rate of motor vehicle crashes involving motorcycles in the State. The agency believes that such a reduction remains meaningful when viewed in light of the steady increase in motorcycle use and registrations in recent years.

Finally, NHTSA data systems for all 50 States, the District of Columbia and Puerto Rico cover only fatal crashes. No national data system currently exists for all crashes that covers both crashes resulting in injuries and crashes involving property damage. Accordingly, NHTSA proposes to rely on crash data provided by each State for the crash-related portion of this criterion.

Demonstrating Compliance (23 CFR 1350.4(c)(2))

To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State would submit: (1) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; and (2) A description of

the State's methods for collecting and analyzing data showing the number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible. The methods used by the State for collecting this data would be required to be the same in both years or improved in subsequent years. NHTSA would perform the necessary computations using the State-submitted data, final FARS data, and FHWA registration data to determine if the State meets the requirements of this criterion.

D. Impaired Driving Program

To qualify for a grant based on this criterion, SAFETEA–LU requires that a State must "implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation."

Agency's Proposal (23 CFR 1350.4(d))

To satisfy this criterion, the agency proposes that a State must have an impaired driving program that, at a minimum: (1) Uses State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and (2) Includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest. NHTSA proposes that for the purposes of this criterion, "impaired" would refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal impairment level does not exceed .08 BAC.

Basis for Proposal

NHTSA recognizes that definitions of impairment differ from State to State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit. The agency proposes that each State may use its definition of impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit. In order to implement a program to reduce impaired driving, a State would use its own data to perform problem identification and prioritization to reduce impaired driving and impaired motorcycle operation in problem areas in the State.

NHTSA proposes that if a State's program includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes), it will be consistent with the SAFETEA–LU requirement that the impaired driving program under this criterion be implemented statewide. For the purposes of this criterion, majority would mean greater than 50 percent. Finally, as identified in SAFETEA–LU, a State's impaired driving program should include specific countermeasure strategies to reduce impaired motorcycle operation.

Demonstrating Compliance (23 CFR 1350.4(d)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of impaired motorcycle crashes per county or political subdivision (such data would be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State would provide data from calendar year 2005)); (2) A description of the State's impaired driving program as implemented, including a description of its specific countermeasures used to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes); and (3) A copy of the State's law or regulation defining impairment.

To demonstrate compliance with this criterion for the second and subsequent years it seeks to qualify, a State would submit information concerning any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to implement the impaired driving program in the same manner.

E. Reduction of Fatalities and Accidents Involving Impaired Motorcyclists

To qualify for a grant based on this criterion, SAFETEA–LU requires that a State must experience "a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol-or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations)."

Agency's Proposal (23 CFR 1350.4(e))

The agency proposes that to satisfy this criterion in any fiscal year, a State must: (1) Based on *final* FARS data, experience at least a reduction of one in the number of fatalities involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and* (2) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year. Using the following data sources, NHTSA would perform the computations to determine a State's compliance with this criterion:

- As with criterion number 3 above, under this criterion, the agency proposes that "preceding calendar year" would mean the calendar year that precedes the beginning of the fiscal year of the grant by one year.
- The agency also proposes to use FHWA motorcycle registration data to determine motorcycle registrations under this criterion.
- The agency proposes to use State crash data provided by the State to determine the number of reported crashes involving alcohol- and drug-impaired motorcycle operators.

The agency proposes that for the purposes of this criterion, "impaired" would refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal alcohol impairment level does not exceed .08 BAC.

Basis for Proposal

The proposed use of FARS data, FHWA motorcycle registration data, State crash data and the proposed definition of preceding calendar year under this criterion mirror the proposed use of these terms under criterion number 3, as described above, and the rationale is the same. Additionally, the use of FARS data for this criterion will be particularly helpful because one of the limitations of the State crash data files is unknown alcohol use. In order to calculate alcohol-related crash

involvement for a State, NHTSA uses a statistical model based on crash characteristics to impute alcohol involvement in fatal crashes where alcohol use was unknown or not reported.

Because NHTSA recognizes that definitions of impairment differ from State to State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit, the agency proposes that each State may use its definition of alcohol- and drug-impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit.

Demonstrating Compliance (23 CFR 1350.4(e)(2))

To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State would submit: (1) Data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; (2) A description of the State's methods for collecting and analyzing data showing the number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of crashes involving alcohol- and drug-impaired motorcycle operators as complete as possible (the methods used by the State for collecting this data would be the same in both years or improved in subsequent years); and (3) A copy of the State's law or regulation defining alcohol- and drug-impairment. NHTSA would perform the necessary computations using the State-submitted data, final FARS data, and FHWA registration data to determine if the State meets the requirements of this criterion.

F. Use of Fees Collected From Motorcyclists for Motorcycle Programs

To qualify for a grant based on this criterion, SAFETEA–LU requires that "all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety programs."

Agency's Proposal (23 CFR 1350.4(f))

The agency proposes that a State may qualify for a grant under this criterion as a "Law State" or a "Data State." For the purposes of this criterion, NHTSA proposes that a Law State would mean a State that has a law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. For the purposes of this criterion, NHTSA proposes that a Data State would mean a State that does not have such a law or regulation.

To qualify for a grant under this criterion as a Law State, NHTSA proposes that a State must have in place the law or regulation described above. To qualify for a grant under this criterion as a Data State, NHTSA proposes that a State must demonstrate that revenues collected for the purposes of funding motorcycle training and safety programs are placed into a distinct account and expended only for motorcycle training and safety programs.

Basis for Proposal

NHTSA's proposal to permit a State to qualify under this criterion as either a Law State or a Data State provides flexibility to States and is consistent with the SAFETEA–LU language requiring that all fees collected by a State from motorcyclists for the purposes of funding motorcycle training and safety programs be used for motorcycle training and safety programs.

Demonstrating Compliance (23 CFR 1350.4(f)(2), (3))

To demonstrate compliance as a Law State under this criterion for the first fiscal year it seeks to qualify, a State would submit a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. To demonstrate compliance as a Law State in the second and subsequent years it seeks to qualify, a State would submit a copy of the law or regulation if it has changed since the State submitted its last grant application, or a certification that its law or regulation has not changed since the State submitted its last grant application and received approval.

To demonstrate compliance as a Data State under this criterion, for any fiscal year it seeks to qualify, a State would submit data and/or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data and/or documentation would show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

IV. Administrative Issues

A. Application Requirements (23 CFR 1350.5)

The proposed rule outlines certain procedural steps to be followed when States wish to apply for a grant under this program. A State would submit, through its State Highway Safety Agency, an application to the appropriate NHTSA Regional Administrator satisfying the minimum qualification requirements under § 1350.4 and identifying the grant criteria under which it seeks to qualify. Application through a State Highway Safety Agency is consistent with other grant programs administered by NHTSA. To ensure that States have adequate notice and time to prepare and submit their applications for fiscal year 2006, applications for this grant program in fiscal year 2006 would be due no later than August 15. For the remaining fiscal years in which States apply for grant funds under this program, applications would be due no later than August 1.

The Application would include the applicable criteria-specific certifications specified in § 1350.4 and located in Appendix A. Additionally, the State would provide the following general certifications located in Appendix B: (1) It will use the motorcyclist safety grant funds awarded exclusively to implement programs in accordance with the requirements of section 2010(e) of SAFETEA–LU, Public Law 109–59; (2) It will administer the motorcyclist safety grant funds in accordance with 49 CFR part 18 and OMB Circular A–87; and (3) It will maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (a SAFETEA–LU requirement).

A State would submit an original and two copies of its application to the appropriate NHTSA Regional Administrator. To ensure a manageable volume of materials for the agency's review of applications, the proposal provides that States should not submit media samples unless specifically requested.

B. Awards (23 CFR 1350.6)

NHTSA will review each State's application for compliance with the requirements of the implementing regulations and will notify qualifying States in writing of grant awards. Upon initial review of the application, the proposed procedures would allow NHTSA to request additional information from the State prior to making a determination of award, in order to clarify compliance with the statutory criteria and grant application procedures.

SAFETEA–LU specifies that the amount of a grant made to a State for a fiscal year under this grant program may not be less than $100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code. However, the release of the full grant amounts under section 2010 is subject to the availability of funding for each fiscal year. If there are expected to be insufficient funds to award full grant amount to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of a State's application, and release the remainder, up to the State's proportionate share of available funds, before the end of that fiscal year. If insufficient funds are appropriated to distribute the minimum amount ($100,000) to all qualifying States, all States would receive the same reduced amount. Project approval, and the contractual obligation of the Federal Government to provide grant funds, would be limited to the amount of funds released.

C. Post-Award Requirements (23 CFR 1350.7)

Consistent with current procedures in other highway safety grant programs administered by NHTSA, the agency's proposal provides that within 30 days after notification of award but in no event later than September 12, a State would be required to submit electronically to the agency a Program Cost Summary (HS Form 217) obligating funds to the Motorcyclist Safety Grant Program. In addition, a State would be required to include documentation in the Highway Safety Plan (or in an amendment to that plan) prepared under 23 U.S.C. 402 indicating how it intends to use the motorcyclist safety grant funds. The State would also be required to detail program accomplishments in the Annual Performance Report required to be submitted under the regulation implementing the section 402 program. These documenting requirements would continue each fiscal year until all section 2010 grant funds have been expended.

D. Uses of Grant Funds (23 CFR 1350.8)

As specified in SAFETEA–LU, a State may use section 2010 grant funds only for motorcyclist safety training and motorcyclist awareness programs, including: (1) Improvements to motorcyclist safety training curricula; (2) Improvements in program delivery of motorcycle training to both urban and rural areas (including procurement or repair of practice motorcycles; instructional materials; mobile training units; and leasing or purchasing facilities for closed-course motorcycle skill training);[2] (3) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and (4) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed using Share-the-Road model language required under section 2010(g) of SAFETEA–LU. As specified in SAFETEA–LU, a State that receives a section 2010 grant may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under section 2010.

SAFETEA–LU places an additional limitation on the use of grant funds. Specifically, a State that receives a section 2010 grant must maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004. (A State may use either Federal or State fiscal years.) However, because section 2010 of SAFETEA–LU does not include a matching requirement, the Federal share of programs funded under section 2010 will be 100 percent.

V. Comments

The agency finds good cause to limit the period for comment on this notice to 30 days. In order to publish a final rule in time to accommodate the application period for States and a subsequent review period for the agency, this comment period is deemed necessary. The shortened comment period will assist the agency in ensuring that grant funds under section 2010 are made available to States during the fiscal year.

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (See 49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA–2006–23700, DOT, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS Web site at *http://dms.dot.gov* and click on "Help" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday. You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at *http://dms.dot.gov*.

(2) On that page, click on "Simple Search".

(3) On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm*) type in the five-digit docket number shown at the

[2] In connection with the leasing or purchasing of facilities, grantees should note that the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115) places limits on the use of section 2010 funds. Specifically, the Act provides that none of the section 2010 funds "shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local or private buildings or structures."

beginning of this document. Example: If the docket number were "NHTSA–2001–12345," you would type "12345." After typing the docket number, click on "search."

(4) 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. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

VI. Statutory Basis for This Action

The agency's proposal would implement the grant program created by section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59).

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rulemaking action is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (February 26, 1979)).

The agency's proposal does not affect amounts over the significance threshold of $100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. The funds to be distributed under the application procedures developed in the proposal would be well below the annual threshold of $100 million, with authorized amounts of $6 million in each of FYs 2006–2008 and $7 million in FY 2009.

The agency's proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The agency's proposal would not create an inconsistency or interfere with any actions taken or planned by other agencies. The agency's proposal would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the agency's proposal does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In consideration of the foregoing, the agency has determined that if it is made final, this rulemaking action would not be economically significant. The impacts of the rule would be so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a).) No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the section 2010 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, I certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. Moreover, the proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729,

February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action 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.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This NPRM, if made final, would result in a new collection of information that would require OMB clearance pursuant to 5 CFR part 1320. In a **Federal Register** document of March 2, 2006 (71 FR 10753), NHTSA sought public comment on the proposed collection of information for the motorcyclist safety grant program. The proposed collection would affect the fifty states, the District of Columbia and Puerto Rico. NHTSA estimates the total annual collection of information burden to be 1560 hours. NHTSA accepted public comment on this proposed collection until May 1, 2006.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This proposed rule does not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this proposal would not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

List of Subjects in 23 CFR Part 1350

Grant programs-transportation, Highway safety, Motor vehicles-motorcycles.

In consideration of the foregoing, the agency proposes to amend chapter III of title 23 of the Code of Federal Regulations by adding part 1350 to read as follows:

PART 1350—INCENTIVE GRANT CRITERIA FOR MOTORCYCLIST SAFETY PROGRAM

Sec.

Authority: Sec. 2010, Public Law 109–59, 119 Stat. 1535; delegation of authority at 49 CFR 1.50.

§ 1350.1 Scope.

This part establishes criteria, in accordance with section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), for awarding incentive grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.

§ 1350.2 Purpose.

The purpose of this part is to implement the provisions of section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and to encourage States to adopt effective motorcyclist safety programs.

§ 1350.3 Definitions.

As used in this part—

FARS means NHTSA's Fatality Analysis Reporting System.

Impaired means alcohol- or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

Majority means greater than 50 percent.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motorcyclist awareness means an individual or collective awareness of—

(1) The presence of motorcycles on or near roadways; and

(2) Safe driving practices that avoid injury to motorcyclists.

Motorcyclist awareness program means an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

Motorcyclist safety training or *Motorcycle rider training* means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

Preceding calendar year means the calendar year that precedes the beginning of the fiscal year of the grant by one year. (For example, for grant applications in fiscal year 2006, which began in October 2005, the preceding

calendar year is the 2004 calendar year and final FARS data, State crash data and FHWA motorcycle registration data from the "preceding calendar year" would, therefore, be such data from calendar year 2004.)

State means any of the fifty States, the District of Columbia, and Puerto Rico.

§ 1350.4 Qualification requirements.

To qualify for a grant under this part, a State must meet, in the first fiscal year it receives a grant, at least one, and in the second and subsequent fiscal years it receives a grant, at least two, of the following grant criteria:

(a) *Motorcycle rider training course.* To satisfy this criterion, a State must have an effective motorcycle rider training course that is offered throughout the State, provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and that may include innovative training opportunities to meet unique regional needs, subject to the following requirements:

(1) The State must, at a minimum:

(i) Use a training curriculum that:

(A) Is approved by the designated State authority having jurisdiction over motorcyclist safety issues;

(B) Includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; and

(C) May include innovative training opportunities to meet unique regional needs;

(ii) Offer at least one motorcycle rider training course either—

(A) In a majority of the State's counties or political subdivisions; or

(B) In counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iii) Use motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(iv) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) A copy of the official State document (*e.g.*, law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues;

(ii) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists;

(iii)(A) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application; or

(B) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records;

(iv) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(v) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training courses used in the State (*e.g.*, conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

(3) To demonstrate compliance with this criterion in the second and subsequent fiscal years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the State continues to offer the motorcycle rider training course in the same manner.

(b) *Motorcyclists awareness program.* To satisfy this criterion, a State must have an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists, subject to the following requirements:

(1) The motorcyclists awareness program must, at a minimum:

(i) Be developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) Use State data to identify and to prioritize the State's motorcyclist awareness problem areas;

(iii) Encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(iv) Incorporate a strategic communications plan that—

(A) Supports the overall policy and program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest;

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues;

(iii) Data used to identify and prioritize the State's motorcycle safety problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision (such data must be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State must provide data from calendar year 2005));

(iv) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(v) A copy of the strategic communications plan showing that it:

(A) Supports the overall policy and program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes);

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem (*e.g.*, newspapers, billboard advertisements, e-mail, posters, flyers, mini-planners, promotional items, or computer-led and instructor-led training sessions).

(3) To demonstrate compliance with this criterion in the second and subsequent fiscal years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the State continues to implement its motorcyclists awareness program in the same manner.

(c) *Reduction of fatalities and crashes involving motorcycles.* To satisfy this criterion, a State must experience a reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), subject to the following requirements:

(1) As computed by NHTSA, a State must:

(i) Based on *final* FARS data, experience at least a reduction of one in the number of motorcycle fatalities for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and*

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

(2) To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State must submit:

(i) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; and

(ii) A description of the State's methods for collecting and analyzing data showing the number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible (the methods used by the State for collecting this data must be the same in both years or improved in subsequent years);

(d) *Impaired driving program.* To satisfy this criterion, a State must implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation, subject to the following requirements:

(1) The impaired driving program must, at a minimum:

(i) Use State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and

(ii) Include specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of impaired motorcycle crashes per county or political subdivision (such data must be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State must provide data from calendar year 2005));

(ii) A description of the State's impaired driving program as implemented, including a description of its specific countermeasures used to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes); and

(iii) A copy of the State's law or regulation defining impairment.

(3) To demonstrate compliance with this criterion in the second and subsequent years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the State continues to implement its impaired driving program in the same manner.

(e) *Reduction of fatalities and accidents involving impaired motorcyclists.* To satisfy this criterion, a State must experience a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol- or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), subject to the following requirements:

(1) As computed by NHTSA, a State must:

(i) Based on *final* FARS data, experience at least a reduction of one in the number of fatalities involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and*

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

(2) To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State must submit:

(i) Data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year;

(ii) A description of the State's methods for collecting and analyzing data showing the number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year,

including a description of the State's efforts to make reporting of crashes involving alcohol- and drug-impaired motorcycle operators as complete as possible (the methods used by the State for collecting this data must be the same in both years or improved in subsequent years); and

(iii) A copy of the State's law or regulation defining alcohol- and drug-impairment

(f) *Use of fees collected from motorcyclists for motorcycle programs.* To satisfy this criterion, a State must have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs, subject to the following requirements:

(1) A State may qualify under this criterion as either a Law State or a Data State.

(2) To demonstrate compliance as a Law State, the State must submit:

(i) In the first fiscal year it seeks to qualify, a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) In the second and subsequent years it seeks to qualify:

(A) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs; or

(B) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a certification by the State that its law or regulation has not changed since the State submitted its last grant application and received approval.

(3) To demonstrate compliance as a Data State, in any fiscal year it seeks to qualify, a State must submit data and/or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data and/or documentation must show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

(4) *Definitions.* As used in this section—

(i) A *Law State* is a State that has a law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) A *Data State* is a State that does not have a law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

§ 1350.5 Application requirements.

(a) No later than August 15 in fiscal year 2006 and no later than August 1 of the remaining fiscal years for which the State is seeking a grant under this part, the State must submit, through its State Highway Safety Agency, an application to the appropriate NHTSA Regional Administrator. The State's application must:

(1) Identify the criteria that it meets and satisfy the minimum requirements for those criteria under § 1350.4;

(2) Include the applicable criteria-specific certifications in Appendix A to this part, as specified in § 1350.4; and

(3) Include the general certifications in Appendix B to this part.

(b) A State must submit an original and two copies of its application to the appropriate NHTSA Regional Administrator.

(c) To ensure a manageable volume of materials for the agency's review of applications, a State should not submit media samples unless specifically requested by the agency.

§ 1350.6 Awards.

(a) NHTSA will review each State's application for compliance with the requirements of this part and will notify qualifying States in writing of grant awards. In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the information required by this part.

(b) NHTSA may request additional information from a State prior to making a determination of award.

(c) Except as provided in paragraph (d) of this section, the amount of a grant made to a State for a fiscal year under this program may not be less than $100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code.

(d) The release of grant funds under this part is subject to the availability of funds for each fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amount upon initial approval of a State's application and release the remainder, up to the State's proportionate share of available funds, before the end of that fiscal year. If insufficient funds are available to distribute the minimum amount ($100,000) to all qualifying States, all States would receive the same reduced amount. Project approval and the contractual obligation of the Federal Government to provide grant funds, is limited to the amount of funds released.

§ 1350.7 Post-award requirements.

(a) Within 30 days after notification of award but in no event later than September 12 of each year, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating funds to the Motorcyclist Safety Grant Program.

(b) Each fiscal year until all grant funds have been expended, a State must:

(1) Document how it intends to use the motorcyclist safety grant funds in the Highway Safety Plan (or in an amendment to that plan), required to be submitted by September 1 each year under 23 U.S.C. 402; and

(2) Detail program accomplishments in the Annual Performance Report required to be submitted under the regulation implementing 23 U.S.C. 402.

§ 1350.8 Use of grant funds.

(a) *Eligible uses of grant funds.* A State may use grant funds only for motorcyclist safety training and motorcyclist awareness programs, including—

(1) Improvements to motorcyclist safety training curricula;

(2) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(i) Procurement or repair of practice motorcycles;

(ii) Instructional materials;

(iii) Mobile training units; and

(iv) Leasing or purchasing facilities for closed-course motorcycle skill training;

(3) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(4) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed using Share-the-Road model language required under section 2010(g) of SAFETEA–LU, Public Law 109–59.

(b) *Suballocation of funds.* A State that receives a grant may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this part.

(c) *Matching requirement.* The Federal share of programs funded under this part shall be 100 percent.

Appendix A to Part 1350—Certifications Specific to Grant Criteria for Second and Subsequent Fiscal Years

State: _____
Fiscal Year: _____

(CHECK ALL THAT APPLY)

I hereby certify that the State (or Commonwealth) of _____:

- Motorcycle Rider Training Courses criterion—second and subsequent Fiscal Years
  - ☐ has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to offer its motorcycle rider training courses in the same manner.
- Motorcyclists Awareness Program criterion—second and subsequent Fiscal Years
  - ☐ has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to implement its motorcyclists awareness program in the same manner.
- Impaired Driving Program criterion—second and subsequent Fiscal Years
  - ☐ has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to implement its impaired driving program in the same manner.
- Use of Fees Collected from Motorcyclists for Motorcycle Programs criterion (Law State)—second and subsequent Fiscal Years
  - ☐ has made no changes to the law or regulation previously submitted to and approved by NHTSA under this criterion requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

_____
Governor's Highway Safety Representative
Date: _____

Appendix B to Part 1350—General Certifications

State: _____
Fiscal Year: _____

(APPLIES TO ALL GRANT CRITERIA)

I hereby certify that the State (or Commonwealth) of _____:

- Will use the motorcyclist safety grant funds only for motorcyclist safety training and motorcyclist awareness programs, in accordance with the requirements of section 2010(e) of SAFETEA–LU, Public Law 109–59;
- Will administer the motorcyclist safety grant funds in accordance with 49 CFR part 18 and OMB Circular A–87; and
- Will maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years (FY) 2003 and 2004. (A State may use either Federal or State fiscal years).

_____
Governor's Highway Safety Representative
Date: _____

Issued on: May 18, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–4792 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[Docket No. MS–018–FOR]

Mississippi Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes a revision to its statutes regarding valid existing rights as it pertains to designation of lands as unsuitable for surface coal mining operations. Mississippi intends to revise its program to be consistent with SMCRA.

This document gives the times and locations that the Mississippi program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.t., June 23, 2006. If requested, we will hold a public hearing on the amendment on June 19, 2006. We will accept requests to speak at a hearing until 4 p.m., c.t. on June 8, 2006.

ADDRESSES: You may submit comments, identified by Docket No. MS–018–FOR, by any of the following methods:

- E-mail: *aabbs@osmre.gov.* Include Docket No. MS–018–FOR in the subject line of the message.
- Mail/Hand Delivery: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209
- Fax: (205) 290–7280
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Mississippi program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. E-mail: *aabbs@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, Jackson, Mississippi 39289–1307. Telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program

includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments in the September 4, 1980, **Federal Register** (45 FR 58520). You can also find later actions concerning the Mississippi program and program amendments at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Amendment

By letter dated April 5, 2006 (Administrative Record No. MS–0402), Mississippi sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Mississippi sent the amendment at its own initiative. Below is the change Mississippi proposes.

Mississippi Code Annotated Section 53–9–71(4)

Mississippi's statute at section 53–9–71(4) currently reads as follows: (4) After July 1, 1979, and subject to valid rights existing on August 3, 1977, no surface coal mining operations shall be permitted.

Mississippi proposes to revise section 53–9–71(4) to read as follows: (4) After July 1, 1979, and subject to valid rights, no surface coal mining operations shall be permitted.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Birmingham Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. MS–018–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on June 8, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the

regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Mississippi program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Mississippi program has no effect on Federally-recognized Indian tribes.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 20, 2006.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E6–7917 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–033]

RIN 1625–AA09

Drawbridge Operation Regulations; Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations governing the operation of the Beach Channel railroad bridge across Jamaica Bay, at mile 6.7, New York. This proposed rule would allow the Beach Channel Bridge to remain in the closed position during the morning and afternoon commuter rush hours from 6:45 a.m. to 8:20 a.m. and 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays. This rule is expected to help facilitate commuter rail traffic while continuing to meet the present and anticipated needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before July 24, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, 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 First Coast Guard District, Bridge Branch, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–06–033), 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 if 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; however, you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Beach Channel railroad bridge across Jamaica Bay at mile 6.7, has a vertical clearance of 26 feet at mean high water, and 31 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.5, require the bridge to open on signal at all times.

Jamaica Bay facilitates both commercial and recreational vessel traffic.

The owner of the bridge, New York City Transit, requested a change to the drawbridge operation regulations to help reduce commuter rail traffic delays during the morning and afternoon commuter hours.

Under this proposed rule the Beach Channel railroad bridge would not open for the passage of vessel traffic from 6:45 a.m. to 8:20 a.m. and from 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

On November 2, 2005, the Coast Guard implemented a 90-day temporary deviation with request for public comment (70 FR 66260), to test the above proposed rule change. The temporary test deviation was in effect from December 1, 2005 through February 28, 2006. No comments or complaints were received in response to the temporary test deviation.

Discussion of Proposed Rule

This proposed rule would allow the Beach Channel railroad bridge to remain closed for the passage of vessel traffic from 6:45 a.m. to 8:20 a.m. and from 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

The Coast Guard reviewed the bridge opening logs for the Beach Channel railroad bridge from June 2002 through May 2004. The logs indicated that there were normally between 5 and 24 bridge opening requests received Monday through Friday each month between 6:45 a.m. and 8:20 a.m. and between 3 and 12 opening requests received from 5 p.m. and 6:45 p.m.

During the temporary test deviation in effect from December 1, 2005 through February 28, 2006, the Coast Guard received no complaints or comments in response to the temporary test deviation which temporarily changed the bridge operating schedule.

The Coast Guard believes this proposed rule, if adopted, would help facilitate commuter rail traffic while continuing to meet the present and anticipated needs of navigation.

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.

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

This conclusion is based on the fact that vessel traffic would not be precluded from transiting through the Beach Channel railroad bridge each day, except for two closures of short duration, one in the morning, and one in the afternoon. Mariners would simply need to plan their daily transits in accordance with drawbridge operation schedule in order to help balance the needs of both rail and marine traffic.

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 section 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 conclusion is based on the fact that vessel traffic would not be precluded from transiting through the Beach Channel railroad bridge each day, except for two closures of short duration, one in the morning, and one in the afternoon. Mariners would simply need to plan their daily transits in accordance with the drawbridge operation schedule in order to help balance the needs of both rail and marine traffic.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668–7165. 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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environment documentation because this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the Instruction, an "Environmental Analysis Checklist" is 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 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.795, redesignate suspended paragraph (b), and paragraphs (c) and (d) as paragraphs (c), (d) and (e) respectively, suspend newly designated paragraph (c), and add a new paragraph (b) to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

* * * * *

(b) The draw of the Beach Channel railroad bridge shall open on signal; except that, the draw need not open for the passage of vessel traffic, 6:45 a.m. to 8:20 a.m. and 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

* * * * *

Dated: May 4, 2006

David P. Pekoske,

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

[FR Doc. E6–7861 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–06–015]

RIN 1625–AA09

Drawbridge Operation Regulations; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the operating regulations for the First Avenue South dual drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. The proposed change would enable the bridge owner to keep the bridges closed during night hours for a period longer than 60 days. This would facilitate painting the structure while properly containing debris and paint.

DATES: Comments and related material must reach the Coast Guard on or before June 23, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpw), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174–1067 where the public docket for this rulemaking is maintained. 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 Aids to Navigation and Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief Bridge Section, (206) 220–7282.

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 [CGD13–06–015], 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 Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The dual First Avenue South bascule bridges provide 32 feet of vertical clearance above mean high water for the central 100 feet of horizontal distance in the channel spans. When the drawspans are open there is unlimited vertical clearance for the central 120 feet of the spans. An adjacent, parallel bascule bridge was constructed and completed in 1999. Drawbridge openings are provided for recreational vessels, large barges, and floating construction equipment.

The operating regulations currently in effect for these drawbridges at 33 Code of Federal Regulations 117.1041 provide that the spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday, except for Federal holidays. The draws shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing such a vessel or en route to take in tow a vessel of that size.

The proposed temporary rule would enable the bridge owner to paint the structure after preparing the surfaces of the steel truss beneath the roadway. All of this work must be accomplished within a containment system that permits no material to fall into the waterway. This containment system would have to be modified for drawspan openings.

Discussion of Proposed Rule

The proposed closed period is from 9 p.m. to 5 a.m. Sunday through Friday from July 15 to September 30, 2006. This operating scheme was authorized last year for the same purpose and generated no objections or complaints from waterway users.

Our previous analysis indicated that most vessel operators would not be inconvenienced by the hours of temporary closure. This conclusion seems to have been borne out as no complaints were received during the previous season of work. Others would receive enough notice to plan trips at other hours. Vessel traffic includes tugboats, barges, derrick barges, sailboats and motorized recreational boats including large yachts. The majority of vessels pass through the dual bascule spans during hours other than those proposed.

First Avenue South is a heavily traveled commuter arterial that serves Boeing Company plants and other industrial facilities in south Seattle. The dual bascule spans need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 6 p.m. to 9 p.m. Monday through Friday. Vessels of 5000 gross tons or more are exempted from these closed periods. However, vessels of this size infrequently ply this reach of the waterway. The dual spans open an average of four times a day.

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.

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. Most vessels will be able to plan transits to avoid the closed periods. Most commercial vessel owners have indicated that they can tolerate the proposed hours by working around them. Saturdays will enjoy normal operations, lessening inconvenience to sailboats.

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 may affect some recreational sailboat owners insofar as they must return by 9 p.m. or wait until 5 a.m. to regain moorage above the drawbridges. We expect these to be few in number.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, at (206) 220–7282.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the proposed action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From 9 p.m. July 15 to 5 a.m. September 30, 2006, in § 117.1041, suspend paragraph (a)(1) and add a new paragraph (a)(3) to read as follows:

§ 117.1041 Duwamish Waterway.

* * * * *

(a) * * *

(3) From Monday through Friday, except all Federal holidays but Columbus Day, the draws of the First Avenue South Bridges, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except during these hours. The draws shall open at any time for a vessel of 5000 gross tons and over, a vessel towing a vessel 5000 gross tons and over, and a vessel proceeding to pick up for towing a vessel of 5000 gross tons and over. From July 15 to September 30, 2006, Sunday through Monday, the draws need not be opened for the passage of any vessels from 9 p.m. to 5 a.m.

* * * * *

Dated: May 11, 2006.

R.C. Parker,

Captain, U. S. Coast Guard, Acting District Commander, Thirteenth Coast Guard District.

[FR Doc. E6–7868 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–019]

RIN 1625–AA87

Security Zone, Mackinac Bridge and Straits of Mackinac, Mackinaw City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent security zone approximately one quarter mile on each side of the Mackinac Bridge in the Straits of Mackinac near Mackinaw City, MI. This security zone will place navigational and operational restrictions on all vessels transiting through the Straits area, under and around the Mackinac Bridge, located between Mackinaw City, MI. and St. Ignace, MI. This rule will be in effect Labor Day of each year; 6 a.m. to 11:59 p.m.

DATES: Comments and related materials must reach the Coast Guard on or before June 23, 2006.

ADDRESSES: You may mail comments and related material to the Commander, Sector Sault Ste. Marie, 337 Water Street, Sault Ste. Marie, MI 49738–9501. Sector Sault Ste. Marie 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 Sector Sault Ste. Marie between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact LCDR R. Stephenson, Prevention Department Chief, Sector Sault Ste. Marie, MI at 906–635–3220.

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 [CGD09–06–019], 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 that your submission 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 Sector Sault Ste. Marie at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Mackinac Bridge Walk is held on Labor Day of each year. At this annual event participants are permitted to walk the five mile distance of the Mackinac Bridge from St. Ignace, MI to Mackinaw City, MI. The purpose of this security zone is to protect pedestrians during the event from accidental or intentional vessel to bridge allision.

Because this is an annual event, the Coast Guard is enacting a permanent security zone that will be in effect Labor Day of each year.

Discussion of Proposed Rule

Because of the nature of this event, the Coast Guard will require vessels transiting the security zone to adhere to specified operational and navigational requirements. These requirements include: All vessels must obtain permission from the COTP or a Designated Representative to enter or move within, the security zone established in this section. Vessels with an operable Automatic Identification System (AIS) unit should seek permission from the COTP or a Designated Representative at least 1 hour in advance. Vessels with an operable AIS unit may contact VTS St. Marys River (Soo Traffic) on VHF channel 12. Vessels without an operable AIS unit should seek permission at least 30 minutes in advance. Vessels without an operable AIS unit may contact Coast Guard Station St. Ignace on VHF channel 16.

These restrictions are necessary for safe navigation of the bridge and to ensure the safety of vessels and their personnel as well as the public's safety due to the high number of pedestrians associated with the Mackinac Bridge Walk. Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative.

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. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of 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.

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.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain 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 offered to assist small entities in understanding the proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on 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 proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule will not 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; 8sampling 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, swhich guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This temporary rule establishes a security zone and as such is covered by this paragraph.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.928 to read as follows:

§ 165. 928 Security Zone; Mackinac Bridge, Straits of Mackinac, Michigan

(a) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative* means those persons designated by the Captain of the Port to monitor these security zones, permit entry into these zones, give legally enforceable orders to persons or vessels within these zones and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (e) of this section to enforce this section and Vessel Traffic Service St. Marys River (VTS) are Designated Representatives.

(2) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(3) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(4) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(5) *Michigan Law Enforcement Officer* means any regularly employed member of a Michigan police force responsible for the prevention and detection of crime and the enforcement of the general criminal laws of Michigan as defined in Michigan Compiled Laws section 28.602(l)(i).

(b) *Security zone.* The following area is a security zone: All waters enclosed by a line connecting the following points: 45°50.763N: 084°43.731W, which is the northwest corner; thence east to 45°50.705N: 084°43.04W, which is the northeast corner; thence south to 45°47.242N: 084°43.634W, which is the southeast corner; thence west to 45°47.30N: 084°44.320W, which is the southwest corner; then north to the point of origin. The zone described above includes all waters on either side of the Mackinac Bridge within one-quarter mile of the bridge. [Datum: NAD 1983].

(c) *Obtaining permission to enter or move within, the security zone:* All vessels must obtain permission from the COTP or a Designated Representative to enter or move within, the security zone established in this section. Vessels with an operable Automatic Identification System (AIS) unit should seek permission from the COTP or a Designated Representative at least 1 hour in advance. Vessels with an operable AIS unit may contact VTS St. Marys River (Soo Traffic) on VHF channel 12. Vessels without an operable AIS unit should seek permission at least 30 minutes in advance. Vessels without an operable AIS unit may contact Coast Guard Station St. Ignace on VHF channel 16.

(d) *Regulations.* The general regulations in 33 CFR part 165 subpart D, apply to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the security zone established in this section unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. All vessels entering or moving within the security zone must operate at speeds which are necessary to maintain a safe course and which will not exceed 12 knots.

(e) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Michigan Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR § 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section pursuant to 33 CFR 6.04–11.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from the requirements in this section.

(g) *Waiver.* For any vessel, the Captain of the Port Sault Ste. Marie may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(h) *Enforcement period.* This rule will be in enforced Labor Day of each year; 6 a.m. to 11:59 p.m.

Dated: May 2, 2006.

E.Q. Kahler,

Captain, U.S. Coast Guard, Captain of the Port, Sault Ste. Marie.

[FR Doc. E6–7862 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2005–20380]

Port Access Routes Study of Potential Vessel Routing Measures to Reduce Vessel Strikes of North Atlantic Right Whales

AGENCY: Coast Guard, DHS.

ACTION: Notice of study results; request for comments.

SUMMARY: The Coast Guard announces the completion of a Port Access Route Study that analyzed potential vessel routing measures and considered adjusting existing vessel routing measures in order to help reduce the risk of vessel strikes of the highly endangered North Atlantic right whale. The study focused on the northern region off the Atlantic Coast which included Cape Cod Bay, the area off Race Point at the northern end of Cape Cod (Race Point) and the Great South Channel; and in the southern region which included areas along the seacoast in the approaches to the Ports of Jacksonville and Fernandina Beach, Florida, and Brunswick, Georgia. This notice summarizes the study's recommendations. Comments on these recommendations are requested.

DATES: Comments and related material must reach the Docket Management Facility on or before June 5, 2006.

ADDRESSES: Comments and material received from the public, as well as the actual study and other documents mentioned in this notice, are part of docket USCG–2005–20380 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may submit comments identified by Coast Guard docket number USCG–2005–20380 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study results, call George Detweiler, Office of Navigation Systems, Coast Guard, telephone 202–267–0574, or send e-mail to *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402–0271.

SUPPLEMENTARY INFORMATION: You may obtain a copy of the Port Access Route Study by contacting either person listed under the **FOR FURTHER INFORMATION CONTACT** section. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web Site at *http://dms.dot.gov.*

Public Participation and Request for Comments

We encourage you to comment on the study and its recommendations by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice of study (USCG–2005–20380), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Definitions

The following definitions are from the International Maritime Organization's (IMO's) publication "Ships' Routeing" and should help you review this notice:

Area to be avoided or *ATBA* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Separation Zone or *separation line* means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme or *TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

When did the Coast Guard conduct this Port Access Route Study (PARS)?

We conducted this PARS following our announcement of the PARS in a notice published in the **Federal Register** on February 18, 2005, (70 FR 8312). This notice had a comment submission deadline of April 19, 2005.

What is the study area?

The study area encompassed the two regions described as follows:

1. *Northern region:* Cape Cod Bay; the area off Race Point at the northern end of Cape Cod (Race Point) and the Great South Channel.

2. *Southern region:* The area bounded to the north by a line drawn at latitude 31°27′ N (which coincides with the northernmost boundary of the mandatory ship reporting system) and to the south by a line drawn at latitude line 29°45′ N. The eastern offshore boundary is formed by a line drawn at longitude 81°00′ W and the western boundary is formed by the shoreline. Included in this area are the ports of Jacksonville and Fernandina, FL, and Brunswick, GA.

Why did the Coast Guard conduct this PARS?

The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) published an advance notice of proposed rulemaking (NMFS ANPRM) (69 FR 30857, June 1, 2004) in the **Federal Register**, which announced that it is considering regulations to implement a strategy to reduce ship strikes of right whales (Strategy). The goal of the Strategy is to assist in the recovery of the right whale by reducing the likelihood and threat of ship strikes.

Section 626 of the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (enacted August 9, 2004) mandates that the Coast Guard shall: (1) Cooperate with the National Oceanic and Atmospheric Administration in analyzing potential vessel routing measures for reducing vessel strikes of North Atlantic Right Whales, as described in the notice published at pages 30857 through 30861 of volume 69 of the **Federal Register**; and (2) provide a final report of the analysis to Congress within 18 months after the date of enactment of the Act.

The Coast Guard is charged with enforcing the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the regulations issued under those statutes. One of the Coast Guard's primary strategic goals is the protection of the marine environment, including the conservation of living marine resources and enforcement of living marine resource laws.

The Coast Guard works independently, and in collaboration with NMFS, to prevent ship strikes and promote right whale conservation. The Coast Guard issues local and written periodic notices to mariners concerning ship strikes, issues NAVTEX messages alerting mariners to the location of right whales, and actively participates in the Mandatory Ship Reporting (MSR) System that provides information to mariners entering right whale habitat. In addition, the Coast Guard provides patrols dedicated to enforcement of the ESA and the MMPA, provides limited vessel and aircraft support to facilitate right whale research and monitoring, and disseminates NMFS information packets to vessels boarded in or near right whale waters. As part of its Strategy development, and consistent with section 626 of the 2004 Act, NMFS asked the Coast Guard for assistance in its ship-strike rulemaking by conducting a Port Access Route Study (PARS).

How did the Coast Guard conduct this PARS?

During the course of a routine PARS, the Coast Guard would review port data, which would include vessel types, vessel traffic density, types of cargo, economic impacts, port improvements, vessel safety, and overall environmental impacts. In addition, the Coast Guard would review comments received on the PARS notice. Further, if meetings of any type were held, comments received at those meetings would also be considered.

In analyzing potential vessel routing measures for reducing vessel strikes of North Atlantic right whales, the Coast

Guard and NMFS agreed this PARS would be narrower in scope than a routine PARS because the Coast Guard did not consider economic impacts. Economic impacts are being considered by NMFS as part of an economic analysis it is conducting as part of the implementation of its Strategy. The Coast Guard analyzed ship transit data and reviewed research papers published and/or provided by NMFS. These papers discussed right whale habitat and migration patterns, and also analyzed ship transit data, including Mandatory Ship Reporting System data. Comments received on its PARS announcement in the **Federal Register** as well as comments NMFS received on its ANPRM were also reviewed by the Coast Guard.

Study Recommendations

The PARS recommendations include the following:

1. Establish precautionary areas at the entrance to the ports of Jacksonville and Fernandina Beach, FL, and Brunswick, GA.
2. Establish six, two-way routes for the ports of Jacksonville and Fernandina Beach, FL, and Brunswick, GA.
3. Establish precautionary areas at the entrance to Cape Cod Canal and in the vicinity of New Inlet, MA.
4. Establish three, two-way routes in Cape Cod Bay to the ports of Boston and Provincetown, MA, and the entrance to Cape Cod Canal.
5. Establish a two-way recommended track from the Cape Cod Canal entrance to Provincetown, MA.
6. Realign and modify the location and size of the western portion of the TSS "In the Approach to Boston, Massachusetts."

Next Steps

A brief synopsis of how the PARS recommendations will proceed towards implementation follows:

1. Changes to the TSS will be implemented through submission of a proposal by the United States to the International Maritime Organization (IMO). Upon IMO approval, adoption, and implementation, NOAA charts will be revised to reflect changes to the TSS and the Coast Guard will revise the list of TSSs at 33 CFR part 167.
2. The final locations of the precautionary areas, two-way routes, and the two-way recommended track will be determined and approved by the Coast Guard and NOAA. After approval they will be placed on the appropriate charts by NOAA. Notification of the establishment of these routing measures and their placement on applicable charts will be published in the appropriate Local Notice to Mariners.
3. Changes to aids to navigation resulting from the above actions will be accomplished through the following established procedures—notification of proposed changes in the Local Notice to Mariners with an opportunity for comment and notification of the final changes in the Local Notice to Mariners.

Conclusion

We appreciate the comments we received concerning the PARS. We will provide opportunity for additional comments on any recommended changes to existing routing or operational measures listed in 33 CFR part 167 through notices published in the **Federal Register**.

Dated: May 15, 2006.

Howard L. Hime,

Acting Director of Standards, Assistant Commandant for Prevention.

[FR Doc. E6–7859 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–KY–0002–200531(b); FRL–8173–9]

Approval and Promulgation of Implementation Plans; Kentucky; Redesignation of the Boyd County SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 13, 2005, and later clarified in a July 12, 2005, supplemental submittal, the Commonwealth of Kentucky submitted a request to redesignate the sulfur dioxide (SO_2) nonattainment area of Boyd County to attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2. Boyd County is located within the Huntington-Ashland, West Virginia (WV)—Kentucky (KY)—Ohio (OH) Metropolitan Statistical Area (MSA), and the Boyd County SO_2 nonattainment area is comprised of the southern portion of Boyd County. The Commonwealth also submitted, as revisions to the Kentucky State Implementation Plan (SIP), a maintenance plan for the area and a source-specific SIP revision for the Calgon Carbon Corporation facility in Catlettsburg, Kentucky. EPA is proposing to approve the redesignation request for the Boyd County SO_2 nonattainment area and the maintenance plan for this area. The maintenance plan provides for the maintenance of the SO_2 NAAQS in Boyd County for the next ten years. EPA is also proposing to approve the source-specific SIP revision for the Calgon Carbon Corporation facility.

DATES: Comments must be received on or before June 23, 2006.

ADDRESSES: Comments may be mailed to Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank, (404) 562–9042, or by electronic mail at *difrank.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information on the approval of Kentucky's redesignation request and maintenance plan for the Boyd County SO_2 nonattainment area, and source-specific SIP revision, please see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: May 12, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–7934 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0441; FRL–8174–4]

RIN 2060–AI66

National Emission Standards for the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 30, 1996, EPA issued national emission standards for hazardous air pollutants (NESHAP) for the printing and publishing industry under section 112 of the Clean Air Act (CAA). We are proposing to amend the final rule to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also proposes to amend the Paper and Other

Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. These proposed amendments appear in the Rules and Regulations Section of this **Federal Register** as a direct final rule.

DATES: *Comments.* Written comments must be received on or before June 23, 2006 unless a public hearing is requested by June 5, 2006. If a public hearing is requested, written comments must be received on or before July 10, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on June 8, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0441, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov* and *salman.dave@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–0246.
- Mail: U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: In person or by courier, deliver comments to: Air and Radiation Docket (6102T), EPA West Building, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0441. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0441, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the Air and Radiation Docket homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2004–0441, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

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

FOR FURTHER INFORMATION CONTACT: Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (D205–01), Research Triangle Park, NC 27711; telephone number (919) 541–0859; fax number (919) 541–0246; e-mail address: *salman.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* Code	Examples of potentially regulated entities
Industry	322212	Folding Paperboard Box Manufacturing.
	322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.
	322222	Coated and Laminated Paper Manufacturing.
	322223	Plastics, Foil, and Coated Paper Bag Manufacturing.
	322224	Uncoated Paper and Multiwall Bag Manufacturing.
	322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging.
	323111	Commercial Gravure Printing.
	323112	Commercial Flexographic Printing.
	323119	Other Commercial Printing.
	326192	Resilient Floor Covering Manufacturing.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria of the rule. If you have any questions regarding the applicability of this action to a

particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. David Salman, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (D205–01), Research Triangle Park, NC 27711, telephone number (919) 541–0859, e-mail address: *salman.dave@epa.gov*, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. Salman to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

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

Direct Final Rule. A direct final rule identical to this proposal is published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule.

We are taking direct final action because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no adverse comments, we will take no further action on the proposed rule. If we receive adverse comments, we will withdraw only the amendments, sections or paragraphs of the direct final rule on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which will become effective and which are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of today's **Federal Register** is withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on today's proposed rule. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of today's **Federal Register**.

Regulatory Flexibility Act

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

For purposes of assessing the impact of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business ranging from 500 to 1,000 employees as defined by the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We conducted an assessment of the impact of the May 30, 1996 final rule on small businesses within the industries affected by that rule. This analysis allowed us to conclude that there would not be a significant economic impact on a substantial number of small entities from the implementation of that rule. There is nothing contained in the proposed rule amendments that will impose an economic impact on small businesses in any way not considered in the analysis of the May 30, 1996 final rule; this means that the proposed rule amendments have no incremental economic impact on small businesses beyond what was already examined in the final rule. We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

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

Dated: May 18, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–4822 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–8172–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the Internal Parcel, encompassing 7,399 acres of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU), from the National Priorities List (NPL) on April 26, 2006. The 30-day public comment period is scheduled to end on May 26, 2006. EPA has received a request to extend the public comment period. In response, EPA is extending the public comment period for an additional 30 days concluding on June 26, 2006.

The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of

the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the Internal Parcel of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface media (soil, surface water, sediment) and structures within the Internal Parcel of the On-Post OU of the RMA/NPL Site as well as the groundwater below the Internal Parcel that is east of E Street, with the exception of a small area of contaminated groundwater located in the northwest corner of Section 6. The rest of the On-Post OU, including groundwater below RMA that is west of E Street, and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments must be received on or before June 26, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instruction for submitting comments.
- E-mail: *chergo.jennifer@epa.gov.*
- Fax: 303–312–6961.
- Mail: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.
- Hand Delivery: 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA's Region 8 Superfund Records Center, 999 18th Street, Denver, Colorado 80202–2466 and the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748. The Region 8 Docket Facility is open from 8 a.m. to 4 p.m. by appointment, Monday through Friday, excluding legal holidays. The EPA Docket telephone number is 303–312–6473. The RMA's Docket Facility is open from 12 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, or by appointment. The RMA Docket telephone number is 303–289–0362.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver Colorado, 80202–2466; telephone number: 1–800–227–8917 or (303) 312–6601; fax number: 303–312–6961; e-mail address: *chergo.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces a thirty day extension of the public comment period for the proposed deletion of the Internal Parcel of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on these proposed actions. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). The partial deletion from the RMA/NPL Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site until June 26, 2006.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Internal Parcel and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required;

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the areas deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the proposed deletion of the Internal Parcel from the RMA/NPL Site:

(1) The Army has requested the partial deletion and prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notice of intent for partial deletion.

(3) Concurrent with the national Notice of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announced a thirty day public comment period, ending May 26, 2006, based upon publication of the notice in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty day extension of the public comment period, ending June 26, 2006.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day extension of the public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repositories listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summaries. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Internal Parcel of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repositories listed above after the final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty day extension of the public comment period for the proposed partial deletion from the RMA/NPL Site. EPA Region 8 announced its intent to delete the Internal Parcel of the RMA/NPL Site from the NPL on April 26, 2006. The original basis for deleting the Internal Parcel from the RMA/NPL Site has not changed. The **Federal Register** notice for the Internal Parcel (71 FR 24627, Apr. 26, 2006) provides a thorough discussion of the basis for the intended partial deletion.

Dated: May 15, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E6–7664 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 06–70]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission addresses several pending issues related to the jurisdictional separations process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. The Further Notice of Proposed Rulemaking seeks comment on issues relating to reform of the jurisdictional separations process, including several proposals submitted to the Commission since its adoption of the *2001 Separations Freeze Order*.

DATES: Comments are due on or before August 22, 2006. Reply comments are due on or before November 20, 2006.

ADDRESSES: You may submit comments, identified by CC Docket No. 80–286, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Attorney Advisor, at (202) 418–7389 or Michael Jacobs, at (202) 418–2859, Telecommunications Access Policy Division, Wireline Competition Bureau, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking* (FNPRM) in CC Docket No. 80–286, FCC 06–70, released on May 16, 2006. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

1. The FNPRM addresses several pending issues related to the jurisdictional separations process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The FNPRM seeks comment on issues relating to reform of the jurisdictional separations process, including several proposals submitted to the Commission since its adoption of the *2001 Separations Freeze Order*, 66 FR 33202, June 21, 2001. The technological and market landscape of

the telecommunications industry has continued to evolve since the adoption of the *1997 Separations Notice*, 62 FR 59842, which initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and market changes warrant comprehensive reform of the separations process. Thus, in the FNPRM, the Commission seeks comment on the effects on its separations rules of increased market adoption of IP-enabled services such as voice over IP (VoIP) services, among other technological and market changes.

2. Because of the time that has passed and changes that have occurred since the *1997 Separations Notice*, the Commission asks that commenters refresh the record on the *1997 Separations Notice*. For instance, the Commission seeks guidance on whether competitive neutrality, administrative simplicity, and principles of cost causation still should be the primary criteria for evaluating proposals for reform of the separations rules, or whether other criteria should be balanced in addition to or in place of these criteria. In addition, the Commission solicits updated analysis of whether the Supreme Court's holding in *Smith* v. *Illinois*, 282 U.S. 133 (1930), is still applicable in light of competitive market conditions. Furthermore, the Commission seeks comment on whether there is a continued need to prescribe separations rules for either price cap or rate-of-return incumbent LECs.

3. On December 19, 2001, following adoption of the *2001 Separations Freeze Order*, the State Members of the Federal-State Joint Board on Jurisdictional Separations (Joint Board) filed the *Glide Path Paper*, outlining seven options for comprehensive separations reform, including the advantages and disadvantages of each option. The *Glide Path II Paper*, prepared by the State Members of the Joint Board in late October 2005, proposes six options for comprehensive separations reform, some of which overlap with the seven proposed in the original *Glide Path Paper*. Both papers also outline several goals for comprehensive separations reform, including the principles that separations should be simpler, separations should be compatible with new technologies and competitive markets, and cost responsibilities should follow jurisdictional responsibilities. The Commission asks commenters to refresh the record on the *Glide Path Paper*, and, as requested by the State Members of the Joint Board, the Commission seeks comment on all of the proposals in the *Glide Path II Paper*.

4. In a May 2004 letter to the Commission, the State Members of the Joint Board suggested a one-time data collection designed to assist the Commission in evaluating whether to modify its rules pertaining to jurisdictional separations, specifically, the part 36 category relationships and jurisdictional cost allocation factors. The Commission believes that the information derived from such a data request will be useful in assisting it as it contemplates comprehensive separations reform. Appendix C of the Order and FNPRM contains the draft data request. The Commission seeks comment generally on the data request's utility in assisting separations reform efforts, and on whether, as currently drafted, the data request will help the Commission to elicit useful information towards that end. The Commission also seeks comment on whether there are alternatives to a data request to help the Commission educe the desired information, and on whether there is any way to streamline the draft data request without sacrificing its utility.

5. In the *2001 Separations Freeze Order*, the Commission agreed with the Joint Board's recommendation that the Commission commit itself to addressing the separations ramifications of issues associated with the emergence of new technologies and local exchange service competition. These issues include the appropriate separations treatment of: (1) Unbundled network elements; (2) digital subscriber line services; (3) private lines; and (4) Internet traffic. In accord with the Commission's commitment, the Commission seeks comment on the separations ramifications of these four specified issues.

6. In addition, the Commission seeks comment on what effect competitive changes in the local telecommunications marketplace since passage of the Telecommunications Act of 1996 (1996 Act) should have on comprehensive reform of the Commission's separations rules; the general interaction of the Commission's separations rules with its universal service rules; the effects that separations reform would have on evaluation of special access rates; and the effect on comprehensive separations reform, and vice-versa, of a Commission grant or denial of a BellSouth request for forbearance from the separations rules. Furthermore, the Commission seeks comment on how any other issues and proceedings before the Commission, may affect, or be affected by, comprehensive separations reform.

7. Finally, while the Commission froze the separations category relationships and the jurisdictional cost allocation factors in the *2001 Separations Freeze Order*, the Commission also required that categories or portions of categories that had been directly assigned prior to the separations freeze would continue to be directly assigned to each jurisdiction. There has been some disagreement, however, between state commissions and carriers regarding the application of this direct assignment requirement. For instance, at its February 2006 Winter Meetings, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution stating that the Commission "should clarify that all carriers must continue to directly assign all private lines and special access circuits based on existing line counts." Conversely, USTelecom asserts that the direct assignment provision "is narrow and does not require investment studies," but that some state regulators are attempting to compel carriers to demonstrate that costs are directly assigned in the proper manner. The Commission seeks comment on the clarifications sought by NARUC and by USTelecom.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided above. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

9. In the *1997 Separations Notice*, the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's part 36 jurisdictional separations rules, and that the separations process codified in part 36 was developed during a time when common carrier regulation presumed

that interstate and intrastate telecommunications service must be provided through a regulated monopoly. Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's part 36 procedures to ensure that they meet the objectives of the 1996 Act. The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process. Because over eight years have elapsed since the closing of the comment cycle on the *1997 Separations Notice*, and the industry has experienced myriad changes during that time, we ask that commenters, in their comments on the present FNPRM, refresh the record on the issues set forth in the *1997 Separations Notice*, and we seek comment on several new issues related to separations reform.

10. We seek comment on four issues relating to comprehensive separations reform. First, the Commission seeks comment on specific proposals for comprehensive separations reform advanced by the State Members of the Joint Board. Second, the Commission seeks comment on a draft data request prepared by the State Members that is intended to elicit data that may be helpful in formulating a reformed separations process. Third, the Commission seeks comment on the separations ramifications of four specific issues associated with the emergence of new technologies and local exchange service competition, including the appropriate separations treatment of: (1) UNEs; (2) DSL services; (3) private lines; and (4) Internet traffic. Fourth, the Commission seeks comment on how the market adoption and regulatory treatment of IP-enabled services, and other issues and proceedings before the Commission, may affect, or be affected by, comprehensive separations reform.

11. Furthermore, we seek comment on clarifications sought by NARUC and by USTelecom as to direct assignment of investment categories and portions of investment categories during the freeze.

12. The purpose of proposed separations reform is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry. Though the Commission originally proposed that competitive neutrality, administrative simplicity, and principles of cost causation should be the primary criteria for evaluating proposals for separations reform, in the FNPRM we seek guidance on whether these criteria should be retained as the primary criteria, or whether other criteria should be balanced in addition to or in place of these criteria.

2. Legal Basis

13. The legal basis for the FNPRM is contained in sections 1, 2, 4, 201 through 205, 215, 218, 220, 221(c), 254 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 221(c), 254 and 410; section 706(a) of the Telecommunications Act of 1996, 47 U.S.C. 157nt; and sections 1.421, 36.1 and 36.2 of the Commission's rules, 47 CFR 1.421, 36.1, and 36.2.

3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(b). In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

15. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard established by the SBA, and is not dominant in its field of operation. Section 121.201 of the SBA regulations defines a small wireline telecommunications business as one with 1,500 or fewer employees. In addition, the SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Because our proposals concerning the part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1500 or fewer employees may be affected by the proposals made in this FNPRM. We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

16. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,303 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. The FNPRM seeks comment on a draft one-time data collection designed to assist the Commission in evaluating whether to modify its separations rules, specifically, the part 36 category relationships and jurisdictional cost allocation factors. To assist the Separations Joint Board and the Commission in this regard, carriers would be requested to identify and explain the way in which specific categories of costs and revenues are recorded for accounting and jurisdictional purposes. The Commission seeks comment on alternatives to the data collection, including the draft data request's impact on small incumbent LECs. Furthermore, we believe that incumbent LECs, including small incumbent LECs, would be able to readily obtain the required data at minimal additional costs. We believe that the information derived from a data request will be useful in assisting the Commission as it contemplates comprehensive separations reform, including evaluation of the possible impact of various reform efforts specifically on small incumbent LECs. We emphasize that any data request that the Commission adopts looking towards comprehensive separations reform would be a one-time request.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. *See* 5 U.S.C. 603(c)(1)–(4).

19. As described above, because over eight years have elapsed since the closing of the comment cycle on the *1997 Separations Notice*, and the industry has experienced myriad changes during that time, we ask that commenters, in their comments on the FNPRM, refresh the record on the issues set forth in the *1997 Separations Notice*. We also seek comment on specific proposals for comprehensive separations reform advanced by the State Members of the Joint Board, as well as a draft data request prepared by the State Members that is intended to elicit data that may be helpful in formulating a reformed separations process. For each of these issues and proposals, we seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities.

20. For instance, we ask that commenters specifically address how proposals for comprehensive separations reform advanced by the State Members, the *Glide Path Paper* and *Glide Path II Paper*, would affect small carriers, including rural incumbent LECs. Furthermore, we particularly seek comment on the burdens of the draft data request on small carriers. Moreover, we seek comment on whether there are alternatives to a data request to help the Commission educe the desired information, and on whether there is any way to streamline the draft data request without sacrificing its utility. Finally, as a general matter, we direct commenters to "consider how costly and burdensome any proposed changes to the Commission's separations rules would be for small carriers, and whether such changes would disproportionately affect specific types of carriers or ratepayers."

21. We also emphasize that several of our proposals in the FNPRM, if adopted, could have the effect of eliminating the separations rules in whole or in part. For example, we seek comment on whether there is a continued need to prescribe separations rules for either price cap or rate-of-return incumbent LECs. In addition, several of the proposals in the *Glide Path Paper* and *Glide Path II Paper* call for simplifying separations procedures or eliminating separations altogether. Implementation of these proposals would have the same ultimate effect as freezing the separations rules, namely, easing the administrative burden of regulatory compliance for LECs, including small incumbent LECs. As we recognize in the final RFA certification, the freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If this extended action can be said to have any affect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs, by eliminating the aforementioned separations studies and providing these carriers with greater regulatory certainty. Thus, the Commission is considering several proposals that ultimately could lead directly to reducing the regulatory compliance burden for small incumbent LECs.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

B. Paperwork Reduction Act Analysis

23. The FNPRM does not contain any new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Ex Parte Presentations

24. These matters shall be treated as a "permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

D. Comment Filing Procedures

25. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 22, 2006. Reply comments are due on or before November 20, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

26. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.

27. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

28. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

30. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the

Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

31. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

32. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

34. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, three copies of each pleading must be sent to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B521, Washington, DC 20554; e-mail: *antoinette.stevens@fcc.gov.*

35. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160, or by facsimile at (202) 488–5563.

II. Ordering Clauses

36. Pursuant to the authority contained in sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410, this *Further Notice of Proposed Rulemaking* is adopted.

37. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–7849 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–956; MB Docket No.04–258; RM–11000; RM–11149]

Radio Broadcasting Services; Boulder Town, Levan, Mount Pleasant and Richfield, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses as defective a petition for rulemaking filed by Micro Communications, Inc. licensee of Station KCFM(FM), Channel 244C, Levan, Utah, proposing to substitute Channel 229C for Channel 244C at Levan and modify the license for Station KCFM accordingly. To accommodate this proposal, the substitution of Channel 244C for Channel 229C at Richfield, Utah, and modification of the license of Station KCYQ(FM) was also proposed. Mid-Utah Radio, Inc., licensee of Station KCYQ opposed the proposal and filed a counterproposal requesting the allotment of Channel 231C at Boulder Town, Utah, and the reallotment of Channel 229C from Richfield to Mount Pleasant, Utah. *See* **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 04–258, adopted May 3, 2006, and released May 5, 2006. The Notice of Proposed Rule Making, 69 FR 45302 (July 29, 2004) was issued at the request of Micro Communications, Inc. Our engineering analysis confirms that the petition for rule making failed to protect the Station KCYQ license site as required by § 73.208 of the rules. At the time of filing, Channel 244C at Richfield at Station KCYQ's license site was short-spaced to both Channel 246A at Beaver, Utah and Channel 244C at Mesquite, Utah. The counterproposal filed by Micro Communications, Inc. is dismissed in part. The portion of the counterproposal that proposed the allotment of Channel 231C at Boulder Town will be proposed in a separate Notice of Proposed Rule Making. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act.

The Commission, is, therefore, not required to submit a copy of this *Report and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–7844 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-month Finding for a Petition to List the California Spotted Owl (*Strix occidentalis occidentalis*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the California spotted owl (*Strix occidentalis occidentalis*) under the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information, we find that the petitioned action is not warranted. However, we will continue to seek new information

on the biology of the species as well as potential threats. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the species. This information will help us monitor the status of this species.

DATES: The finding announced in this document was made on May 15, 2006. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: You may send data, information, comments, or questions concerning this finding to the Field Supervisor (Attn: CALIFORNIA SPOTTED OWL), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825 or via fax at 916/414–6710. You may inspect the petition, administrative finding, supporting information, and comments received during normal business hours by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler or Jan Knight at the above address (telephone: 916/414–6600; fax: 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Threatened and Endangered Species. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

On April 3, 2000, we received a petition to list the California spotted owl (spotted owl) as a threatened or endangered species submitted by the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign (Center for Biological Diversity 2000), on behalf of themselves and 14 other organizations. Along with listing, the petition also requested the concurrent designation of critical habitat, emergency listing, and emergency designation of critical habitat. On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60605). In that notice, we found that the petition presented substantial scientific or commercial information to indicate that listing the California spotted owl may be warranted, and we initiated a status review of the taxon. On February 14, 2003, we published a 12-month finding on the petition in the **Federal Register** (68 FR 7580). In that notice, we found that the petitioned action was not warranted because the overall magnitude of threats to the species did not rise to the level requiring protection under the Act.

On May 11, 2004, the Center for Biological Diversity and five other groups filed a lawsuit in Federal District Court for the Northern District of California (*Center for Biological Diversity, et al.* v. *Norton et al.*, No. C–04–1861) alleging that our 12-month finding violated the Act and the Administrative Procedure Act (5 U.S.C. 706). On September 1, 2004, we received an updated petition, dated September 2004, to list the California spotted owl as a threatened or endangered species and to designate critical habitat concurrent with listing based, in part, on information that was not available to us at the time we made our original 12-month finding (Center for Biological Diversity 2004). The updated petition was submitted by the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign, acting on behalf of themselves and six other organizations. The submission clearly identified itself as a petition, and included the requisite identification information of the petitioners, as required in 50 CFR 424.14(a).

In view of the new petition, on March 8, 2005, the District Court in *Center for Biological Diversity* v. *Norton* issued an Order to Show Cause why it should not stay the litigation pending the Service's action on the new petition. In response to that Order, on March 14, 2005, we submitted a declaration to the Court stating that: (1) We could submit for publication in the **Federal Register** a 90-day finding on the new petition by June 13, 2005, and (2) if we found that the information presented in the petition was substantial, we could submit for publication in the **Federal Register** a 12-month finding by March 14, 2006. At a hearing on March 17, 2005, the Court stayed the case for 90 days, directed us to report to the Court and the parties concerning the status of our review of the petition by June 13, 2005, and continued the hearing on pending cross-motions for summary judgment to June 23, 2005. On April 4, 2005, the Court concurred with the parties' requests to continue the hearing date until June 30, 2005, and to allow the Plaintiffs and Intervenor-Defendants (American Forest and Paper Association, California Forestry Association, and Sierra Pacific Industries) until June 23, 2005, to file any responses to our June 13, 2005, filing. On June 13, 2005, we submitted our 90-day finding to the **Federal Register**, which published the finding on June 21, 2005 (70 FR 35607). In that finding, we found that the petition presented substantial scientific or commercial information to indicate that listing the California spotted owl may be warranted, we initiated a status review of the taxon, and we solicited comments and information to be provided in connection with the status review by August 22, 2005. In light of the June 21, 2005, finding and pursuant to a joint stipulation of dismissal by the parties to the litigation, the Court dismissed the above case on July 25, 2005..

On October 14, 2005, we published in the **Federal Register** a notice reopening the public comment period through October 28, 2005 (70 FR 60051). On February 14, 2006, we filed with the Court our intention to deliver the 12-month finding to the **Federal Register** by May 15, 2006, to enable us to incorporate results from the most recent meta-analysis of California spotted owls that was delivered to us on February 21, 2006.

The Petition

The 2004 petition (Center for Biological Diversity 2004) states that historical and recent wildfires, historical logging, drought, diseases, insect pests, and other factors resulted in habitat loss and fragmentation, which negatively affected spotted owl numbers, distribution, and dispersal. The petition describes how fuels build-up and changes in forest structure have put some stands at increased risk of stand-replacing fire, and that increased risk is considered a threat to existing owl pairs across the range of the California spotted owl.

The petition cites results from the meta-analysis of population dynamics of California spotted owls up through 2000 (Franklin *et al.* 2004) as evidence that spotted owl populations are declining and that management of forests may be a cause of these declines. The petition

claims that we did not adequately address reported declines in our 2003 12-month finding (68 FR 7580) due to our heavy reliance on lambda (the finite rate of population change), 95-percent confidence intervals, and uncertainty.

The petition contends that the SNFPA (USFS 2004a) does not adequately protect large trees, high canopy closure, multiple-canopy layers, snags, and downed wood, that it does not provide limits on the proportion of areas that can be degraded through logging, and that it allows for treatment in more spotted owl Protected Activity Centers than does the 2001 Sierra Nevada Forest Plan (USFS 2001). The petition further states that logging under the SNFPA both within and outside of the Herger Feinstein Quincy Library Group Forest Recovery Act Pilot Project area threatens to further degrade and destroy California spotted owl habitat. The petition states that timber harvest on private lands threatens to further degrade and destroy spotted owl habitat, resulting in continued declines in numbers of spotted owls. The petition also states that the California State Forest Practices Code provides almost no specific protections for the spotted owl or its habitat.

The petition states that development on private lands in the Sierra Nevada and southern California presents a significant threat to the California spotted owl, particularly in low elevation riparian hardwood habitats. The petitioners further expressed concern that development in southern California could prevent dispersal between spotted owl populations in southern California, as mountain ranges occupied by spotted owls probably act as habitat islands with limited dispersal between them.

The petition states that recreation potentially affects spotted owls in several ways, including noise disturbance, construction of roads and trails, and expansion of ski resorts. The petition also states that grazing is likely to indirectly affect the owl by reducing or eliminating riparian vegetation, altering forest structure and fire regimes, and reducing prey density. The petition expresses concern that West Nile Virus presents a serious potential threat to California spotted owls, and recommends that its effects on spotted owls be monitored closely. The petition mentions concern that weather poses a threat to California spotted owls, and that threats from hybridization and site competition with the barred owl (*Strix varia*) have increased in recent years.

In this finding, we re-analyzed issues raised in the 2000 petition (Center for Biological Diversity 2000) and included a new analysis of concerns presented for the first time in the 2004 petition (Center for Biological Diversity 2004). In our 90-day finding of June 21, 2005 (70 FR 35607), we briefly analyzed the concerns as described in the petition. We stated that five changes that had taken place since our 2003 finding constituted substantial information that may affect the status and distribution of the California spotted owl or change our understanding of possible declines in California spotted owl populations and thus justified further detailed analysis in a status review and 12-month finding. These changes were: (1) Revisions to the 2001 SNFPA (USFS 2001) in the 2004 SNFPA (USFS 2004a); (2) revisions to the California State Forest Practices Code; (3) possible changes to the draft meta-analysis of the population dynamics of the California spotted owl in the final, published meta-analysis (Franklin *et al.* 2004); (4) impacts of recent fires and anticipated future fires in spotted owl habitat; and (5) further range expansion of the barred owl. In this finding, we analyze these five changes, other concerns expressed in the petition, and other pertinent information relative to whether the California spotted owl should be listed. Specific concerns included in the petition are noted and addressed under each of the factors presented below.

Taxonomy and Description

A summary of taxonomy and description of the California spotted owl can be found in the 2003 12-month finding (68 FR 7580) and is hereby incorporated by reference (68 FR 7580).

Genetics

A discussion of population genetics of the California spotted owl can be found in the 2003 12-month finding (68 FR 7580) and is hereby incorporated by reference (68 FR 7580). Subsequent studies analyzing mtDNA sequences (Haig *et al.* 2004; Chi *et al.* 2005; Barrowclough *et al.* 2005) and microsatellites (Henke 2005) confirmed the validity of the current subspecies designations for northern (*Sq. o. caurina*) and California spotted owls.

Life History

Spotted owls in conifer forests of the Sierra Nevada, especially above mid-elevation mixed-conifer forests located at about 4,000 to 5,000 feet (ft)) (1,200 to 1,525 meters (m)), feed primarily on northern flying squirrels (*Glaucomys sabrinus*) (Verner *et al.* 1992b). Spotted owls in the mid-to lower elevations of the mixed-conifer zone and the upper elevations of the ponderosa pine (*Pinus ponderosa*)/hardwood belt of the Sierras prey primarily on both flying squirrels and dusky-footed woodrats (*Neotoma fuscipes*) (Verner *et al.* 1992b), while spotted owls in southern California feed mostly on woodrats (Thrailkill and Bias 1989). Flying squirrels typically use older mature forests because they provide suitable nest sites, including snags, and abundant sources of food including arboreal lichens and truffles, which are associated with an abundance of soil organic matter and decaying logs (Verner *et al.* 1992b). In second-growth forests in Oregon, northern flying squirrels were found in younger forests if large snags and downed logs remained from earlier stands (Carey and Peeler 1995). Woodrats and deer mice (*Peromyscus maniculatus*) accounted for 29 and 16 percent, respectively, of the total prey items in one study in an industrially managed forest in the Sierra Nevada (Clark 2002). According to Verner *et al.* (1992b:69), "spotted owls in the Sierran foothills and throughout southern California, even at high elevations, obtain 79 to 97 percent of their energy from woodrats." Woodrats are most abundant in younger forest and in shrubby habitats and are uncommon in pure conifer forests or forests with little shrub understory (Williams *et al.* 1992; Ward *et al.* 1998).

A more-complete discussion of California spotted owl life history characteristics including dispersal, reproduction, interactions with other species, and food habits can be found in the 2003 12-month finding (68 FR 7580) and is hereby incorporated by reference.

Distribution and Range

A discussion of range and distribution can be found in the 2003 12-month finding for the California spotted owl (68 FR 7580) and is hereby incorporated by reference. Since publication of the 2003 finding, Gutierrez and Barrowclough (2005:185) noted that the range descriptions of the northern and California spotted owl subspecies in American Ornithologists' Union (1957) did not include the area between Mt. Shasta and Mt. Lassen because spotted owls were not known to occur in that area at that time, and that "the geographic scope of the listing was correct" to use the Pit River as the boundary between the two subspecies. Also since the publication of the 2003 finding, we gathered information concerning records of spotted owls in Baja California, Mexico. In 1887, A.W. Anthony reported seeing a spotted owl in the Sierra San Pedro Martir of northern Baja California, Mexico (Bryant 1889), and, a few years later, may have had a second sighting in the same area (Anthony 1893). Wilbur (1987) stated

that the only other records of spotted owls in Baja California were from the La Grulla area, also in northern Baja California, in 1925 and 1972.

Numbers and Connectivity

There are no reliable total population estimates for the California spotted owl. The number of California spotted owl territories has been used as an index to illustrate the range of the species and jurisdictions in which it occurs. This number is actually a cumulative total of all territories known to be historically or currently occupied by at least one spotted owl. This total increases over time as spotted owls move to new territories and as researchers survey new areas, even though many territories with sufficient suitable habitat may not be occupied in years following their initial discovery and some territories may no longer have sufficient suitable habitat to support spotted owls due to logging or fires. Thus, the number of territories should not be viewed as a population estimate for the taxon.

A total of 2,306 California spotted owl territories has been documented, 1,865 (81 percent) of which are in the Sierras (Service 2002). National forests in the Sierras contain a total of 1,399 territories: Modoc (3), Lassen (138), Plumas (254), Tahoe (173), Lake Tahoe Basin Management Unit (14), El Dorado (202), Stanislaus (234), Humboldt-Toiyabe (2), Inyo (5), Sierra (226), and Sequoia (148). National parks in the Sierras have 129 territories: Lassen Volcanic (6), Sequoia/Kings Canyon (69), and Yosemite (54). Fourteen territories in the Sierras are on Bureau of Land Management (BLM) land in the Sierra Nevada, four are on California State Lands Commission Land, three are in State Parks, one is on California Department of Forestry (CDF) land, one is on Native American land, and 314 are on private lands (Service 2002).

Estimates for total number of spotted owl territories in southern California include 440 (Service 2002), 547 (Verner *et al.* 1994a), and 578 (Beck and Gould 1992). In southern California, spotted owls occupy "islands" of high-elevation forests separated by lowlands of chaparral, desert scrub, and, increasingly, human development (Noon and McKelvey 1992, LaHaye *et al.* 1994). The islands comprise 15–20 populations with 3–270 individuals per population. Islands are separated from each other by 10–72 kilometers (km) (6 to 45 miles (mi)) (Verner *et al.* 1992a, Gutiérrez 1994, LaHaye *et al.* 1994). These populations appear to be isolated from one another; no inter-mountain movements were documented for any of the 478 juvenile California spotted owls banded in the San Bernardino Mountains (LaHaye *et al.* 2001). Using our most-recent estimate of 440 total territories for southern California, the known territories on national forests are as follows: 109 on the Los Padres, 64 on the Angeles, 138 on the San Bernardino, and 18 on the Cleveland (Service 2002). There are two territories known on BLM land, eight on State park lands, six on Native American lands, and 95 on private lands. In addition, there is one known territory in Mexico (Service 2002). These 441 territories in southern California and Mexico comprise 19 percent of the total 2,306 California spotted owl territories.

Since publication of the 2003 12-month finding (68 FR 7580), we obtained additional information regarding spotted owl numbers on private lands in the Sierras. Six timber companies (W.M. Beaty and Associates, Inc.; Collins Pine Company; Fruit Growers Supply Co.; Roseburg Resources Co.; Sierra Pacific Industries (SPI); Soper-Wheeler Co.) own or manage the vast majority of California spotted owl habitat in private lands in the Sierra Nevada. SPI lands include more than 200 California spotted owl territories (Steve Self, SPI. *in litt.* 2005). There are 36 records of nest sites within 4.8 km (3 mi) of W.M. Beaty-managed lands, and three nest sites either on or immediately adjacent to W.M. Beaty-managed lands (Bob Carey, W.M. Beaty, *in litt.* 2005). There are no known spotted owl territory-centers or nests on lands owned by Fruit Growers (John Eaker, Fruit Growers, *in litt.* 2006). (spotted owl territory-centers are typically the locations of nest trees, but if that information is unavailable, they can be the locations where fledgling owls were found. locations where a pair was detected, or locations where a single owl was detected) There are 40 spotted owl territory-centers situated either on or within 1.6 km (1 mi) of the land owned by Soper-Wheeler (Paul Violett, Soper-Wheeler, *in litt.* 2006). There are no known California spotted owl territory-centers or nests on lands owned by Collins Pine, and there are fewer than 10 territory-centers or nests immediately adjacent to their lands on national forest land (Jay Francis, Collins Pine, *in litt.* 2006). There are no known California spotted owl territory-centers or nests on Roseburg Resources lands, but there are four territory-centers or nests within 0.8 km (0.5 mi) of their boundaries (Rich Klug, Roseburg, *in litt.* 2006).

Habitat Use

Suitable habitat for spotted owls includes nesting, roosting, and foraging habitats. Nesting and roosting habitat of spotted owls typically includes many large trees (*e.g.*, Call 1990; Zabel *et al.* 1992a, b; Moen and Gutiérrez 1997; North *et al.* 2000; USFS 2001a). For example, mean (± standard deviation) diameter at breast height (dbh) of the nest trees in Gutiérrez *et al.* (1992) were: 115.6 ± 37.3 cm (45.5 ± 14.7 in) (sample size = 81) in northern Sierran conifer forests; 118.6 ± 49.8 cm (46.7 ± 19.6 in.) (sample size = 41) in southern Sierran conifer forests; 94.0 ± 35.3 cm (37.0 ± 13.9 in.) (sample size = 139) in southern California conifer forests; and 74.9 ± 42.2 cm (29.5 ± 16.6 in.) (sample size = 13) in riparian/hardwood forests. They found that the "dbh of nest trees in our current sample was significantly greater than that of conifers in the Sierra Nevada even in 1900" (Gutiérrez *et al.* 1992:92; emphasis in text). Mean diameters of nest trees in Blakesley (2003) were 117 ± 0.29 cm (46.1 ± 0.1 in.) (sample size = 132). Basal areas of nesting and roosting sites have been shown to be greater than those in random sites in the Sierras and in southern California (Bias 1989 in Gutiérrez *et al.* 1992; Laymon 1988 in Gutiérrez *et al.* 1992; LaHaye *et al.* 1997). Spotted owls nest in a variety of species of live trees and snags in pre-existing structures including cavities, broken top trees, and platforms such as mistletoe brooms, debris platforms and old raptor or squirrel nests; therefore nesting habitat includes more large live, decadent, and dead trees than do forests not used for nesting (Laymon 1988; Call 1990; Bias and Gutiérrez 1992; Gutiérrez *et al.* 1992, 1995; LaHaye *et al.* 1997).

High amounts of canopy closure and structural diversity (multi-layered canopy) are typical of nesting and roosting stands used by spotted owls in the Sierras and in southern California (*e.g.*, Laymon 1988; Call *et al.* 1992; LaHaye *et al.* 1992, 1997; Zabel *et al.* 1992a; Moen and Gutiérrez 1997; North *et al.* 2000; Seamans 2005). Nesting and roosting stands often have mean canopy closures of greater than 75 percent (Bias and Gutiérrez 1992; Gutiérrez *et al.* 1992). Verner *et al.* (1992b:60; emphasis in text) summarized: "Habitats used for nesting typically have greater than 70 percent *total* canopy cover (all canopy above 7 feet [2.1 m]), except at very high elevations where canopy cover as low as 30–40 percent may occur (as in some red fir stands of the Sierra Nevada). Nest stands typically exhibit a mixture of tree sizes and usually at least two canopy layers, with some very large, old trees usually present. * * * Stands used for roosting are similar to those used for nesting, with relatively high canopy

cover, dominated by older trees with large diameters, and with at least two canopy layers * * *"

Spotted owls forage in forests with ample open flying space within and beneath the canopy, so extremely dense stands typically are not used for foraging (Verner *et al.* 1992b; Gutiérrez *et al.* 1995). Verner *et al.* (1992b:60) summarized: "Foraging habitats include suitable nesting and roosting sites as well as more open stands, regularly down to 40–50 percent canopy cover, that are generally similar in structure and composition to nesting and roosting habitat." Foraging habitat in conifer forests is enhanced by the presence of hardwoods, and foraging habitat at lower elevations in the Sierras and in southern California tend to have less downed woody debris and be less multi-layered (Verner *et al.* 1992b).

In the study area with largest sample sizes in Zabel *et al.* (1992a), 24 spotted owls during the breeding season spent 69 percent of their time in forests with 40–69 percent canopy closure and 22 percent of their time in forests with greater than 70 percent canopy closure. During the non-breeding season, 18 spotted owls spent 64 percent of their time in suitable-habitat forests with 40–69 percent canopy closure and 22 percent of their time in forests with greater than 70 percent canopy closure (Zabel *et al.* 1992a). California spotted owls avoid open areas (0–30 percent canopy cover; Gutiérrez *et al.* 1992) and recently logged forests (Call 1990; Zabel *et al.* 1992b; Gutiérrez and Pritchard 1990). As previously mentioned, suitable habitat includes nesting, roosting, and foraging habitat. In light of the typical canopy cover in these habitats (>70 percent for nesting/roosting and >40 percent for foraging), 40 percent canopy cover is a minimum threshold for suitable habitat. Other studies also support this 40-percent canopy-cover threshold for suitable habitat (e.g., Call *et al.* 1992; Verner *et al.* 1992b; Zabel *et al.* 1992; Moen and Gutiérrez 1997).

The Forest Service defines spotted owl habitat by using California Wildlife Habitat Relationship (CWHR) classes. In the CWHR system, tree-dominated habitats are classified relative to six tree size classes and four canopy-closure classes. Size class 1 (seedling tree) areas are comprised of trees less than 2.5 cm (1 in.) dbh, size class 2 (sapling tree) areas are of trees 2.5–15 cm (1–6 in.) dbh, size class 3 (pole tree) stands are of trees 15–28 cm (6–11 in.) dbh, size class 4 (small tree) stands are of trees 28–61 cm (11–24 in.) dbh, sizes class 5 (medium/large tree) stands are of trees greater than 61 cm (24 in.) dbh, and size class 6 (multi-layered tree) stands have class 5 trees over a distinct layer of class 4 or 3 trees and have more than 60 percent canopy closure (Mayer and Laudenslayer 1988). Canopy-closure classes are: S (sparse; 10–24 percent closure), P (open; 25–39 percent closure), M (moderate; 40–59 percent closure), and D (dense; 60–100 percent closure) (Mayer and Laudenslayer 1988). The Forest Service considers suitable California spotted owl habitat as forest stands represented by CWHR classes 4M, 4D, 5M, 5D, and 6 (Mayer and Laudenslayer 1988) in mixed conifer, red fir, ponderosa pine/hardwood, foothill riparian/hardwood, and east-side pine forests, and considers nesting habitat as forest stands represented by CWHR classes 5M (with at least 50 percent canopy closure), 5D, and 6 (USFS 2004a). The Service agrees with this classification depending on the structural condition of 4M and 4D stands. For a complete description of habitat use and home range of California spotted owls, see our 2003 12-month finding (70 FR 35607) and Service (2006), both of which are hereby incorporated by reference. We supplement information in that finding with the following discussion of habitat use by spotted owls.

Habitat modeling of northern spotted owls in California (Franklin *et al.* 2000) and Oregon (Olson *et al.* 2004) showed that survival was maximized when northern spotted owl territories included large blocks of mid- and late-seral forests with some edge, but that fecundity was maximized with small blocks of northern spotted owl habitat and large amounts of edge between spotted owl habitat and other habitats. This difference was due, presumably, to the presence of woodrat prey in brushy clearcuts and forest edges (Franklin *et al.* 2000; Olson *et al.* 2004). Conversely, population analysis of California spotted owls in the central Sierra Nevada with habitat covariates at the territory scale indicated there was no relationship between fecundity and habitat heterogeneity (Seamans 2005). However, survival rate and territory occupancy in that study were positively related to the amount of mid- and late-seral forests (Seamans 2005). Further, it was estimated that reproductive output was strongly influenced by weather, and it was hypothesized that reproductive output by California spotted owls at an individual territory was conditional on the territory being occupied during years when weather conditions were conducive to successful reproduction (Seamans 2005). Reproduction of spotted owls in the southern Sierra Nevada increased with canopy closure because more pairs successfully nested, not due to the production of more young per pair (Lee and Irwin 2005; Lee *in litt.* 2005). This increase in canopy closure appeared to be more of a minimum threshold requirement than a trend, with only marginal increases in spotted owl reproduction as canopy closure increased past the minimum. The minimum appeared to require that at least 44 percent of the 430-ha (1,063-ac) immediately surrounding the territory-center was forest with greater than 40 percent canopy cover. Once this minimum was met, the relative amount of forests with intermediate (40–70 percent) and dense (greater than 70 percent) canopy cover had little measurable effect on reproduction of spotted owls. These findings were conditional on having a suitable nest tree in the stand and are, therefore, not applicable to fire-suppressed stands with heavy ladder fuels in which such trees would be lost in a fire (Lee and Irwin 2005; Lee *in litt.* 2005).

Additional information concerning habitat use and home range of California spotted owls can be found in our 2005 90-day finding (70 FR 35607) which is incorporated by reference.

Habitat Condition

Changes to Habitat

Our 2003 12-month finding (70 FR 35607) included a lengthy discussion of historic changes to California spotted owl habitat which is hereby incorporated by reference. Below, we supplement that discussion with additional information related to wildfires and timber harvest.

The petition states that historic and recent wildfires, as well as more than 100 years of logging in the Sierras, resulted in habitat loss and fragmentation, which negatively affected spotted owl numbers, distribution, and dispersal (Center for Biological Diversity 2004). Suppression of wildland fires, established in California as State and Federal policy by the early 20th century, virtually eliminated forest fires. Up to the 1990s, it was estimated that only 269 ha (664 ac) burned annually in the 237,146-ha (586,000-ac) Eldorado National Forest, whereas approximately 11,736 ha (29,000 ac) burned annually before European arrival (Weatherspoon *et al.* 1992). Due to the lack of frequent fires, many forested areas have grown dense layers of understory trees and have accumulated large amounts of woody debris on the forest floor, thereby increasing the chances of high-intensity, stand-replacing crown fires in the

Sierras and in the mountains of southern California (Kilgore and Taylor 1979; McKelvey and Weatherspoon 1992; Weatherspoon *et al.* 1992; Stephenson and Calcarone 1999). The species composition of these forests has shifted from fire-hardy species to more shade-tolerant, fire-sensitive species such as white fir and incense-cedar (Verner *et al.* 1992; Weatherspoon *et al.* 1992). Additionally, in areas throughout the range of the California spotted owl, trees that are dead or dying due to disease add to the already dense accumulations of woody debris. One of the challenges in assessing the effects of fire management in the habitat of California spotted owls is the need to weigh the long-term benefits of reducing the risk of catastrophic fires against any potential short-term effects on the quality or quantity of spotted owl habitat. In southern California, fire history records since 1910 indicate that the average patch-size of large fires has varied little over the years, but the occurrence of small fires has increased every year (Keeley *et al.* 1999 in USFS 2005a). The total acres burned in the four national forests of southern California have increased during each of the last three decades (USFS 2005a).

Selective harvest of merchantable trees in the Sierras—often old-growth trees—was the norm during the late 1800s through the 1970s, resulting in the loss of much suitable habitat and the production of forests with younger average tree ages. From the 1970s onward, clearcut harvests became increasingly more common, which resulted in patchworks of spatially heterogeneous forests (McKelvey and Johnston 1992). "The mixed-conifer zone of the Sierra Nevada, therefore, has few or no stands remaining that can be described as natural or pristine" (McKelvey and Johnston 1992:241). These activities "undoubtedly impacted spotted owl habitat, though we cannot determine the extent of that impact. In general, the proportion of the area supporting conifer forests appears to have been reasonably static over the last 90 years" (McKelvey and Johnston 1992:246). From the late 1980s onward, cutting was increasingly based on salvaging timber damaged or killed by fires or disease (salvage harvests) (McKelvey and Johnston 1992). Annual total volume of timber cut in the Sierras decreased from approximately 1.6 to 1.9 billion board feet during the late 1940s to early 1950s to approximately 1.3 to 1.5 billion board feet from the mid 1950s to the late 1970s (McKelvey and Johnston 1992:Fig. 11U). Levels of timber harvest on national forest lands declined sharply after implementation of the California Spotted Owl Sierran Province Interim Guidelines in 1993 (USFS 2001). From 1993 through 2004, annual harvest in national forests dropped over 80 percent from 450 to 86 million board feet (mmbf); similarly, annual timber harvest from 1993 to 2004 on private lands in the Sierras declined 37 percent from about 1 billion board feet to 632 mmbf (California Board of Equalization 2006). The average annual harvest from 1993 to 2004 was 188.5 mmbf (California Board of Equalization 2006). Currently, all cutting of timber in the national forests in the Sierra Nevada is conducted as part of the implementation of the Herger Feinstein Quincy Library Group Forest Recovery Act Pilot Project (Pilot Project) and fire-fuel reductions via the SNFPA (USFS 2004a); the amounts and placements of these harvests, and how they are anticipated to affect spotted owls, are presented in other sections below.

The petition states that historical logging, drought, diseases, insects, and other factors have contributed to the loss of habitat for the isolated populations of spotted owls in southern California (Center for Biological Diversity 2004). Timber harvest in southern California was never as extensive as that in the Sierra Nevada. Harvest volume in Los Angeles and San Bernardino Counties was about 10 to 20 times higher in the 1960s than in the early 1980s, and the decline has continued since the 1980s (McKelvey and Johnston 1992). Timber harvest in the four national forests of southern California only occurred during 2 years from 1993 to 2004. In 2001, harvest volume was 1 mmbf, and in 2003, harvest volume was 390,000 board feet (California Board of Equalization 2006). Harvests in national forests of southern California in recent years have primarily been salvage and hazard trees along roads and near administrative sites (Mike Gertsch, USFS, *in litt.* 2002). In 2005, sales of saw timber in the national forests of southern California increased to approximately 10 mmbf due to salvage-harvesting of trees that had died from drought, insects, and fires (Loe *in litt.* 2006). Similarly, private-land harvests in southern California from 1993 to 2002 averaged only 130,000 bf annually, but increased to 7 mmbf in 2003 and 1.4 mmbf in 2004 (California Board of Equalization 2006) due to an increase in salvage-harvesting. Tree mortality and salvage harvesting likely had some adverse effects on spotted owls in southern California. The extent of this effect is unknown, but the quantity harvested is a small fraction of that removed decades earlier (27.4 mmbf was cut in 1963 in southern California alone; McKelvey and Johnston 1992).

Forest types important to spotted owls in southern California include lower montane forests and bigcone-Douglas fir stands, which are patchy in nature and often located within expanses of chaparral. The Forest Service indicates that stand-replacing fires in southern California forests are still relatively uncommon; the few fires that have occurred have either been wind-driven fires in steep terrain or have spread into forests from lower elevations, most often from chaparral. However, in the San Bernardino Mountains, stand-replacing fires resulted in a net loss of 18 percent of the bigcone-Douglas fir stands between 1938 and 1978. Furthermore, recent history in other areas suggests that such fires will become more common (USFS 2005a).

Large-scale fires have occurred in spotted owl habitat in recent years in southern California. For example, in the Los Padres National Forest, wildfires burned to some extent 42,986 ha (106,220 ac) or 18 percent of California spotted owl habitat since 1989. In the Monterey Ranger District, where most of the California spotted owl habitat in Los Padres National Forest is located, 34 percent of 61,625 ha (152,280 ac) of California spotted owl habitat burned to some extent since 1989. The intensities and effects of these fires on spotted owl habitat are unknown, but many of these areas probably burned only lightly (Kevin Cooper, USFS, *in litt.* 2005). In San Bernardino National Forest, five spotted owl territories in the San Diego Ranges were completely burned in 2003, and nine territories in the San Gabriel Mountains were burned so heavily in 2002 and 2003 that it is doubtful that they can support spotted owls at this time (USFS 2004b, Steve Loe, USFS, *in litt.* 2005). In Cuyamaca State Park, which is located in the Laguna Mountains adjacent to the Descanso Ranger District of Cleveland National Forest, the 2003 Cedar Fire completely burned approximately six spotted owl territories (Kirsten Winter, USFS, *in litt.* 2005). These 20 territories that were completely burned during recent years comprise 4.5 percent of the 440 total territories known for southern California. These fires had a negative impact on spotted owls, but we anticipate that fuels-reduction activities in southern California will decrease the frequency of fires in the future.

Present Habitat in the Sierra Nevada

Approximately 2,024,000 ha (5 million ac) of suitable habitat for

California spotted owls (defined as CWHR classes 4M, 4D, 5M, 5D, 6) are located within national forests in the Sierra Nevada, which is about 43 percent of the area managed under the SNFPA (Tom Efird, USFS, *in litt.* 2006). Additionally, Sequoia and Kings Canyon national parks, Yosemite National Park, and Lassen Volcanic National Park collectively include approximately 186,676 ha (461,286 ac) of suitable habitat for spotted owls (Beck and Gould 1992).

National forests in the Sierra Nevada include approximately 560,000 ha (1.4 million ac) of private land within their administrative boundaries. Private land inholdings are much greater in extent in the northern national forests (especially the Lassen, Plumas, and Tahoe) than in the southern Sierra Nevada forests. Much of the private land within the boundary of the Lassen and Plumas national forests is in contiguous blocks, leaving national forest lands also fairly contiguous. Most private land on the Tahoe National Forest is in checkerboard ownership, and the Eldorado National Forest has a combination of checkerboard ownership and large contiguous blocks of inholdings.

SPI is the largest private landowner in the range of the California spotted owl. SPI characterizes its timberland based upon an intensive set of measured inventory plots (1 plot every 1.6 ha (4 ac)) and does not categorize its inventory directly in terms of CWHR types. SPI owns 433,000 ha (1,070,000 ac) of land within the range of the California spotted owl, of which 370,000 ha (913,000 ac) are classified by SPI to be nesting, roosting, or foraging habitat (CWHR 3D, 4M, 4D, 5M, 5D, and 6), and the remainder is classified as prey-producing, non-forest, or plantation (Ed Murphy, SPI, *in litt.* 2006). (The SPI suitable-habitat class includes the smaller tree-size class CWHR class 3D, unlike the USFS and the Service.) Data provided by SPI indicate that many areas considered suitable habitat are of high quality. Of the nesting, roosting, or foraging habitat, 108,000 ha (267,000 ac) contain "nest-site characteristics" (with approximately 50 trees at least 56 cm dbh per ha (20 trees at least 22 in. dbh per ac) and a canopy closure at least 60 percent), and 260,000 ha (642,000 ac) are considered nesting/roosting habitat (CWHR 4D, 5M, 5D, and 6) (Murphy *in litt.* 2006). SPI's "nest-site characteristics" type is derived from measurements at 38 reproductive northern spotted owl (sample size = 22) and California spotted owl (sample size = 16) nest sites. During the next 100 years, SPI estimates that, as their forests mature, habitat with nest-site characteristics will more than double from 25 to 53 percent of all California spotted owl habitat on SPI land. Other habitat types will also change proportionally through time: From 29 to 15 percent for nesting/roosting habitat (excluding nest-site habitat); from 29 to 13 percent for foraging habitat; and from 12 to 16 percent for prey-producing habitat (SPI 1999a, b; Murphy *in litt.* 2006).

W.M. Beaty manages approximately 69,565 ha (171,900 ac) within the range of the California spotted owl. Of this total, 6,235 ha (15,408 ac) are considered suitable habitat for California spotted owls using the criteria used in CDF (2005) (quadratic mean diameter (QMD) at least 27.9 cm (11 in) and overstory canopy closure at least 40 percent) and 1,384 ha (3,420 ac) are considered suitable habitat using more-conservative criteria for northern spotted owls developed by W.M. Beaty and the Service (QMD at least 30.5 cm (12 in) and overstory canopy closure at least 50 percent) (Carey *in litt.* 2005). Fruit Growers owns approximately 44,515 ha (110,000 ac) acres of forest in the range of the California spotted owl (Eaker in *litt.* 2006). Soper-Wheeler owns approximately 25,900 ha (64,000 ac) of land within the range of the California spotted owl, of which approximately 15 percent is in what they define as nesting/roosting habitat (CWHR 4M, 4D, 5M, 5D, 6), 65 percent is what they define as foraging habitat (CWHR 3S, 3P, 3M, 3D, 4S, 4P, 5S, 5P) and 20 percent is non-habitat (CWHR 2S, 2P, 2M, 2D) (Ryan McKillop, Soper-Wheeler, *in litt.* 2006). Within the western Sierras, approximately 93 percent of the 16,997 ha (42,000 ac) owned by Soper-Wheeler is timbered (Violett *in litt.* 2006). Collins Pine owns approximately 38,040 ha (94,000 ac) in the range of the California spotted owl, approximately 95 percent of which is timbered (Francis *in litt.* 2006). Roseburg Resources has 50,000 to 70,000 timbered acres in the range of the California spotted owl, but they have not classified their lands relative to spotted owl habitat (Klug *in litt.* 2006).

Present Habitat in Southern California

There are approximately 473,473 ha (1,170,000 ac) of general habitat types where spotted owls were known to reproduce within the range of spotted owl in southern California and the central Coast Ranges (Stephenson and Calcarone 1999). However, the total amount of suitable habitat in southern California is likely lower than that amount because habitat types are a broad generalization of what California spotted owls actually require for habitat to be suitable (for example, a minimum canopy cover is a requisite for suitable habitat, but is not captured in characterization of habitat types). A discussion of spotted owl habitat in southern California can be found in the 2003 12-month finding for the California spotted owl (68 FR 7580) and is hereby incorporated by reference.

Population Trends

The petition cites results from the meta-analysis of population dynamics of California spotted owls up through 2000 (Franklin *et al.* 2004) as evidence that spotted owl populations are declining and that management of forests may be a cause of these declines (Center for Biological Diversity 2004). This meta-analysis analyzed demographic data of spotted owls on the Lassen (1990 to 2000), Eldorado (1986 to 2000), Sierra (1990 to 2000), and San Bernardino (1987 to 1998) national forests and in Sequoia and Kings Canyon national parks (1990 to 2000). The petition claims that we did not adequately address reported declines in our 2003 12-month finding (68 FR 7580) due to our heavy reliance on the finite rate of population change (lambda), 95-percent confidence intervals, and scientific uncertainty (Center for Biological Diversity 2004). Our analysis of more-recent data up through 2005 (Blakesley *et al.* 2006) indicates more-positive trends for spotted owls in the Sierras and is discussed at length below.

Spotted owls in the Sierra Nevada may have undergone at least three periods of decline due to: Elimination of prey species by intensive livestock grazing and burning in the 1800s; logging beginning in the late 1800s, which removed basic structural elements of spotted owl habitat; and logging of stands in recent decades that regenerated following initial entry (Gutiérrez 1994). However, causal mechanisms of negative effects to spotted owls ascribed to the high levels of timber harvest circa 1990 have been substantially reduced as timber harvest levels dropped and increased protection measures were instituted in the mid- and late-1990s.

A discussion of studies concerning population trends of California spotted owls can be found in the 2003 12-month finding for the California spotted owl, and that information is incorporated by reference (68 FR 7580). Early population studies used an analysis called a "projection matrix" to estimate population trend, and many of these early studies showed declining California spotted owl populations.

However, projection matrices were determined to bias results of spotted owl population trends because they do not account for movement of spotted owls in and out of the population (Franklin *et al.* 2004). With the exception of the San Bernardino study area, California spotted owl study areas were considered "open," (owls moved in and out of the study areas) and, as stated by Franklin *et al.* (2004:53), "we do not expect [traditional projection matrices] to yield useful inferences for geographically open systems." Thus,.we place greater weight on results of more recent meta-analyses (Franklin *et al.* 2004; Blakesley *et al.* 2006), which estimated growth rates for each study area using the "Pradel" method, than on methods that employed the projection matrix. The Pradel method avoids potential biases that cause uncertainty in estimating population trend using the projection matrix because it incorporates emigration and immigration rates (Franklin *et al.* 2004). In our 2003 finding, we included a discussion of the results of a meta-analysis using the Pradel method for five California spotted owls demographic study areas—Lassen (LAS), Eldorado (ELD), Sierra (SIE), Sequoia/Kings Canyon (SKC), and San Bernardino (SAB)—using a draft manuscript of data that was collected from 1990 to 2000 for the ELD, SIE, and SKC study areas, and from 1990–1998 for the SAB study area (later published in Franklin *et al.* 2004).

A more-recent draft meta-analysis report was submitted to the Service on February 21, 2006 (Blakesley *et al.* 2006) for data collected from 1990 to 2005 in four study areas in the Sierras. The San Bernardino study area was not included in this report because there were no survey data after 1998. This new meta-analysis used methods that were very similar to those used in Franklin *et al.* (2004), but incorporated many improvements; methods used in this new meta-analysis are described in Blakesley *et al.* (2006). At the request of the Service, this new analysis also included population viability analyses (PVAs). Overall, results of the new meta-analysis (Blakesley *et al.* 2006) reported more positive indications of population trends for the spotted owls of the Sierra than did the older analysis, as summarized below.

In the meta-analysis of all four study areas, survival rates of adult spotted owls (territorial owls at least 3 years old) were estimated to have increased through time (Blakesley *et al.* 2006). This result is important because "spotted owl population growth is most sensitive to changes in adult survival" (Blakesley *et al.* 2006:27). Analysis of reproductive output on individual study areas showed varying degrees of an even-odd year effect (with good reproduction in even years, poor reproduction in odd years) for the four study areas. As with the earlier meta-analysis, lambda, or the finite rate of population change, was calculated as an annual estimate to determine if the population increased, decreased, or remained stationary. In the earlier meta-analysis (Franklin *et al.* 2004), lambda for LAS showed no trend (was stationary), lambda for SKC decreased and then increased over time, and lambdas for ELD and SIE decreased through time, with that of the ELD being especially steep. With the additional years' data included in the new meta-analysis, no strong evidence was found for decreasing linear trends in lambda on any of the study areas. Lambda for SKC decreased then increased over time, lambdas for LAS and SIE were relatively stationary, and lambda for the ELD showed decreases through the 1999 time period, and then subsequent increases (Blakesley *et al.* 2006).

Mean lambdas estimated for the ELD (1.007) and SKC (1.006) were greater than 1.0, indicating possible increasing populations, the mean lambda estimated for the SIE (0.992) was nearly 1.0, indicating a possible stationary population, and the mean lambda estimated for LAS (0.973) was less than 1.0, indicating a possible declining population. Because these values for lambdas were estimates (it is not possible to calculate the exact value), confidence intervals were calculated to provide an understanding of how close the estimated mean was to the true mean. For example, if a 95-percent confidence interval for an estimated mean lambda of 0.98 was between 0.96 and 1.02, this would tell us that even though our estimated mean lambda was 0.98, we are 95 percent confident that the true lambda is between 0.96 and 1.02. In this example, the confidence interval included 1.0, which means we are 95 percent confident that the true lambda is not statistically different from a stationary population. In the meta-analysis results, the 95-percent confidence intervals for estimates of mean lambda for all four study areas in the Sierras included 1.0, indicating that statistically the populations were not different from stationary populations. The confidence interval for LAS barely included 1.0, however, suggesting that the spotted owls in that study area may have been declining (Blakesley *et al.* 2006).

Using annual lambda estimates calculated in the meta-analysis, Blakesley *et al.* (2006) evaluated the trajectory of each study population through time. This exercise used a hypothetical starting population of 100 owls on each study area, and calculated the number of owls that would remain over the study period (start and end years differed for some study areas depending on survey effort (Blakesley *et al.* 2006)). As presented in the report, if there were 100 spotted owls in SKC in 1993,.hypothetical trajectory estimated that there would be 113 spotted owls in 2003. Similarly, for a 1992–2004 study period for the other study areas, if there were 100 spotted owls in each of these areas in 1992, there would be 69 in LAS, 127 in ELD, and 95 in SIE in 2004. To better understand this exercise as it related to the entire population of spotted owls in the Sierra Nevada, we noted that there were 400 spotted owls to start (100 owls per study area), and a projected end population of 404 spotted owls (by summing 113, 69, 127, and 95).

Finally, for each population, a PVA was produced on predictions of declines in the population greater than 10, 20, and 30 percent for 2–20 years into the future (Blakesley *et al.* 2006). In a PVA, the probability of a certain decline happening in a certain timeframe can range from 0.0 to 1.0 (i.e., 0 percent to 100 percent). Ninety-five-percent confidence intervals on probabilities of declines greater than 10 percent were 0.0 to 1.0 within 5–10 years for all four study areas. Because these probabilities were so imprecise (i.e., the confidence interval covered from 0–100 percent probabilities of decline), inferences were restricted to 7 years into the future. Even after this restriction, predictions had very imprecise confidence intervals. PVAs indicated that the probabilities of observing declines of greater than 10 percent in 7 years were 0.64 (95 percent confidence interval = 0.27 to 0.94) for LAS, 0.23 (95 percent confidence interval = 0.00 to 0.92) for ELD, 0.41 (95 percent confidence interval = 0.09 to 0.78) for SIE, and 0.25 (95 percent confidence interval = 0.00 to 0.89) for SKC. The large confidence intervals indicate that these probabilities still were inexact, making inference from these estimates difficult. In addition, the study modeled the probability of observing declines and increases of greater than 10, 20, and 30 percent at 7 years in the future for a hypothetical population with lambda = 1.0 and temporal process standard deviation (estimated from these spotted owl studies) = 0.082. This hypothetical population exhibited 0.31, 0.15, and 0.05 probability of declining by greater

than 10, 20, and 30 percent, respectively, and 0.33, 0.20, and 0.11 probability of increasing by greater than 10, 20, and 30 percent, respectively (Blakesley *et al.* 2006).

To summarize the recent meta-analysis results for spotted owl populations in the Sierras: Adult survival increased through time; most populations demonstrated an increasing or stationary trend; there was no strong evidence for decreasing linear trends in lambda on any of the study areas; modeling of four study areas demonstrated that total hypothetical spotted owl numbers did not decrease over time; and the PVA results appeared to be somewhat equivocal because of the imprecision of the estimates in the real populations and because the modeled probabilities of increase and decrease in the hypothetical populations were very similar. We find that with the exception of the LAS study area, California spotted owl populations in the Sierras show little evidence of a decline, and attempts to model future population trends are too imprecise to provide an accurate projection.

In southern California, approximately 71 percent of past or current territories of spotted owls are located on public lands, virtually all of which are within four national forests (Los Padres, Angeles, San Bernardino, and Cleveland). Other than a few project-specific surveys, there have been no surveys for spotted owls in the Los Padres National Forest since 1991 (Cooper *in litt.* 2005) or in the Cleveland National Forest since 1995 (Winter *in litt.* 2005), and results from surveys in the Angeles National Forest since 1994 have not been compiled (Ann Berkley and Leslie Welch, USFS, *in litt.* 2005). We have the most information for spotted owls in the San Bernardino National Forest, which contains the largest population of spotted owls in southern California. Early modeling conducted for spotted owls in the San Bernardino and San Jacinto mountains area indicated possible substantial declines (LaHaye *et al.* 1994). Using different methods and analyzing more years of data than those in LaHaye *et al.* (1994), the 2004 meta-analysis reported that the mean lambda for the San Bernardino study area up through 1998 was less than 1.0 (0.978), but was not statistically different from that of a stationary population (Franklin *et al.* 2004). Surveys in the San Bernardino were not conducted from 1999 to 2002. Surveys of many of the territories in the San Bernardino Mountains and San Jacinto Mountains were resumed in 2003 and 2004 (LaHaye *et al.* 2003, 2004), but these surveys were not included in the recent meta-analysis (Blakesley *et al.* 2006) due to the lack of surveys from 1999 to 2002. Identifying trends from southern California data is confounded by factors including: Surveying of additional territories through time (from 42 territories in 1987 to 148 territories in 1998); surveying only approximately one-half of the San Bernardino territories in 2003 (63 territories) and 2004 (77 territories) that were surveyed in 1998; lack of separate analysis of occupancy of the same individual territories from 1987 to 1998; and high number of occupied territories near the end of the survey period (i.e., 100–109 occupied territories in 1989, 1990, 1991, and 1995) (LaHaye *et al.* 2001).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and our implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal endangered and threatened species list. In making this finding, information regarding the status and threats to this species in relation to the five factors in section 4 of the Act is summarized below. In this evaluation, we confine the scope of our judgment of the future actions and programs to reasonably foreseeable outcomes of established management direction, rather than a more speculative assessment of possible future management scenarios.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Stand-replacing Fires

Existing habitat used by California spotted owls appears to be vulnerable to stand-replacing catastrophic fire. As described in the 2003 12-month finding (70 FR 35607) (which we hereby incorporate by reference) and above in "Changes to Habitat," removal of large overstory trees by logging in conjunction with decades of fire suppression has produced forests that are denser, composed of more small and medium-sized trees that are more fire-prone than those historically in the Sierras and in southern California. The petition discusses how changes in forest structure and fuels build-up have put some stands at increased risk of stand-replacing fire, and that increased risk is considered a threat to existing owl pairs across the range of the California spotted owl (Center for Biological Diversity 2004). Dense stand conditions in California forests have increased tree mortality due to drought, and insect and disease outbreaks (University of California 1996). Cumulatively, these conditions have increased the magnitude of the threat of catastrophic stand-replacing fires to nesting and roosting habitats used by spotted owls.

According to the Forest Service, the greatest continuing threat to spotted owls is loss of habitat and subsequent population losses of spotted owls due to stand-replacing fire in unnaturally dense forest stands (USFS 2004a; 2005a). During the past 30 years, an average of 17,400 ha (43,000 ac) of wildfire burned annually in the Sierras; in the past 10 years, this average has increased to about 25,500 ha (63,000 ac) annually (USFS 2004a). The Forest Service believes that it will take at least 20 years of fuels treatments before significant changes in fire behavior are achieved (USFS 2004a). They estimate that about 24,281 ha (60,000 ac) of forests in the Sierras will be burned annually in wildfires over the next 20 years (USFS 2004a), which totals 485,622 ha (1,200,000 ac) or 10.9 percent of the 4.5 million ha (11 million ac) within these national forests. They estimate that about 25 percent of these fires will be high-intensity fires, which would affect 2.7 percent of all of their lands. They also estimate that approximately 90 spotted owl Protected Activity Centers (PACs) (6.8 percent of 1,321 total PACs) would be "lost to wildfire" during that time (USFS 2004a:278) (This 6.8 percent of total PACs lost is less than the 10.9 percent of total forest lost above because many acres anticipated to be burned would be outside of PACs in non-suitable habitat.) They further estimate that 50 years from now, after implementation of the SNFPA, the area burned in the Sierras would drop to about 19,830 ha (49,000 ac) annually (USFS 2004a). Recent fires in southern California, as presented above in "Changes to Habitat," are indicative of anticipated fire-frequencies and fire-intensities anticipated for the near future.

Fuels-Reduction Activities

The petition (Center for Biological Diversity 2004) contends that the SNFPA (USFS 2004a) does not adequately protect large trees, high canopy closure, multiple-canopy layers, snags, and downed wood, that it does not provide limits on the proportion of areas that can be degraded through logging, and that it allows for treatment in more PACs than does the 2001 Sierra Nevada Forest Plan (USFS 2001). The petition further states that logging under the SNFPA both within and outside of the Pilot Project area threatens to further degrade and destroy California spotted

owl habitat. Below, we discuss how guidelines in the SNFPA strive to maintain spotted owl habitat while reducing the threat of wildfire, and we provide details regarding the many restrictions and guidelines that limit the proportion of areas that can be logged in spotted owl habitat.

Concern over potential disastrous wildfire effects on human communities has strongly influenced management direction toward reducing fuels in proximity to human communities in the forested interface between wildlands and urban areas. Response to this concern is manifested in nationwide activities under the National Fire Plan of 2000 which established general guidance and funding for land-management agencies and communities involved in fire suppression and fuels reduction. To reduce the risk of wildfire to communities while modifying fire behavior over the broader landscape, the Forest Service is conducting a fuels-reduction treatment program (the SNFPA) throughout National Forest System lands in the Sierras (USFS 2004a; guidelines and regulations most pertinent to this finding are presented in Factor D).

The SNFPA addresses fuels treatments in two areas: The Pilot Project area within the Lassen and Plumas national forests and the Sierraville Ranger District of the Tahoe National Forest; and all other national forest lands in the Sierras. In Factor D, we discuss the regulations, standards, and guidelines that govern fuels reductions and timber harvests in the Pilot Project area. In brief, within the Pilot Project area, all fuels-reduction and timber-harvest activities are prohibited within the 411 PACs and spotted owl habitat areas (404.7 ha, 1,000ac) surrounding all known territory-centers; suitable nesting habitat (CWHR 5M, 5D, 6) is managed in Defensible Fuel Profile Zones to provide for at least 40 percent canopy cover, retain all trees greater than 76.2 cm (30 in) dbh, and to retain at least 40 percent of the basal area (generally in the largest trees); and there are specific retention requirements in Defensible Fuel Profile Zones and areas thinned using individual-tree selection.

In areas outside of the Pilot Project, priority treatments are focused on lands within designated land allocations named wildland urban interface (WUI) lands, but treatments will occur both in WUIs and in non-WUIs. WUIs are comprised of Defense Zones, which are generally a 0.4-km (0.25-mi) buffer around developed sites, and Threat Zones, which extend approximately 2 km (1.25 mi) out from the Defense Zone boundary. In the national forests in the Sierras, there are 129,177 ha (319,204 ac) in Defense Zones, and 850,433 ha (2,101,470 ac) in Threat Zones; approximately 13 percent of WUI acres are in Defense Zones and 87 percent are in Threat Zones (USFS 2004a). During the 20 years of the SNFPA, the Forest Service plans to treat 340,097 ha (840,400 ac) using prescribed fire as the initial treatment and 584,365 ha (1,444,000 ac) using mechanical treatments, for a total of 970,686 ha (2,398.620 ac) (USFS 2004a:FSEIS 98) or 22 percent of the 4.5 million total ha (11 million ac) in these national forests. Approximately 36 percent of these treatments are expected to be in WUIs and 64 percent are anticipated in non-WUI lands (USFS 2004a; Don Yasuda, USFS, *in litt.* 2006).

Fuels treatments implemented in PACs, each of which contains 121 ha (300 ac), may be important to the persistence of spotted owls if the treatments negatively affect the suitability of these areas for nesting, roosting, and foraging spotted owls. PACs are delineated around all spotted owl territory-centers that have been detected on national forest lands since 1986. Pre-project surveys are conducted in areas of suitable habitat when occupancy of spotted owls is unknown and when projects are expected by the Forest Service to reduce habitat quality. New PACs are delineated when appropriate (USFS 2004a). The Forest Service employs a 0.4-km (0.25-mi) buffer centered on all PACs in which they do not conduct any treatments during the spotted owl nesting season (March 1–August 31) unless the spotted owls in question are found to not be breeding that year. However, they can prescribe-burn in PACs during the early nesting season if dry conditions and heavy fuel loadings after the nesting season would create conditions in which there would be an unacceptable risk of the fires escaping the burn unit or fires would reach the canopy and adversely damage nesting or roosting habitat (USFS 2004a).

Treatment of forest fuels has substantial implications for the California spotted owl, and raises complex questions about the potential benefits and risks to the species that may result from reduction of forest fuels. The Forest Service plans to treat approximately 265,194 ha (655,310 ac) of suitable habitat, which is 13 percent of the 2,024,000 ha (5 million ac) of suitable habitat in these national forests. The primary technique of fuels reduction, which is thinning understory trees with mechanical equipment and/or prescribed fire, may have detrimental effects on spotted owl habitat in the short term, but may favor development of habitat in the longer term, and may reduce the likelihood of catastrophic fire that could substantially degrade or eliminate habitat.

The potential reduction in amount of downed wood is another aspect of fuels treatments that can affect spotted owls. SNFPA direction states that specific retention-levels for downed woody materials within treatments are to be made on an individual-project basis, based on desired conditions for specific land allocations and the effects of future management actions that may create or remove downed logs. In general, the Forest Service will emphasize retention of downed woody material in the largest size classes. General guidelines for large-snag retention provide for retention of 3 to 6 of the largest snags per acre, depending on the forest habitat-type of the treatment (USFS 2004a).

Changes in forest structure due to treatments within PACs outside of the Pilot Project area may degrade the capability of PACs to supply suitable nesting and roosting habitat for spotted owls. Such changes include cutting of larger trees, decrease in canopy closure, increased fragmentation, removal of snags, and reduction in amount of downed wood. SNFPA projects throughout these national forests are to retain all trees 76 cm (30 in) dbh or greater, with exceptions for operability (*e.g.*, road construction, road reconstruction, temporary landing construction). Due to the need to more-aggressively reduce fire threat in Defense Zones, the only limitation to the level of treatment in Defense Zones is this 76-cm (30-in) retention rule. In Threat Zones, the focus of treatments is to remove surface and ladder fuels; there, projects are to retain at least 5 percent of the total treatment area in trees of 15 to 61 cm (6 to 24 in) dbh. We anticipate that few if any nest trees of spotted owls will be lost during these treatments because few spotted owls use nest trees smaller than 76 cm (30 in) dbh (see 70 FR 35607 and Service 2006) and all known nest trees will be protected.

The Forest Service avoids conducting fuels treatments within PACs unless doing so would compromise the overall effectiveness of the landscape fire and fuels strategy. If the Forest Service determines that fuels treatments within PACs are necessary, activities are constrained to remove only surface and ladder fuels unless it is necessary to remove larger trees (except nest trees) to meet fuels-reduction requirements (such as in Defense Zones). Outside of PACs,

the Forest Service allows more flexibility to remove larger trees that contribute to canopy closure in order to meet fuels-reduction needs.

Reduction in canopy cover may have adverse effects on site occupancy, survival, and reproduction of spotted owls due to exposure to weather and modification of preferred forest structure. The Forest Service anticipates that three types of fuels-reduction treatments would change suitable habitat (nesting, roosting, or foraging habitat) into non-suitable habitat, using the threshold of 40 percent canopy closure as the criterion for suitable/non-suitable habitat as described above. The three types of treatments are described as follows. (1) Outside of the Pilot Project area, the Forest Service plans to treat 3,490 ha (8,624 ac) within PACs in WUI Defense Zones (USFS 2004a), and they anticipate that canopy-cover reductions to less than 40 percent would occur in no more than 5 percent of these acres (Yasuda, *in litt.* 2006), or 175 ha (431 ac). This is only 0.1 percent of the total area of the 1,321 PACs, and these treatments are expected to decrease the chances that these PACs will be lost due to fires. This is the only case in which the Forest Service anticipates changing suitable habitat to non-suitable habitat in PACs in the Sierras. (2) Within the area managed under the Pilot Project, all of the 8,650 ha (21,375 ac) of suitable habitat to be group-selection harvested probably will be reduced to less than 40 percent canopy closure. Group-selection harvests are 0.2–0.8 ha (0.5–2 ac) in size, so these small patches may not be large-enough gaps in the canopy to adversely affect spotted owls. To the contrary, such small breaks in the forest could provide good habitat for woodrats (Williams *et al.* 1992), the preferred prey for spotted owls in much of the Sierras (Thrailkill and Bias 1989). (3) Also within the area managed under the Pilot Project, approximately 8,827 ha (21,812 ac) to be treated as Defensible Fuel Profile Zones in CWHR-classed 4M and 4D stands are expected to go below 40 percent canopy closure (Yasuda *in litt.* 2006). We anticipate that the majority of the 8,827 ha (21,812 ac) of suitable habitat to be cut to below 40 percent canopy cover for Defensible Fuel Profile Zones would then be unsuitable for use by spotted owls, but that the edges of some of these areas would serve as foraging habitat. The most-important areas for spotted owls will not be affected by these two types of treatments in the Pilot Project area, because no PACs will be treated in the Pilot Project area. Overall, a total of 17,652 ha (43,618 ac) is anticipated to be downgraded from suitable to non-suitable habitat due to treatments via the SNFPA, which is 0.9 percent of the 2,024,000 ha (5 million ac) of present suitable habitat. Only 1 percent of these areas that would be reduced to less than 40 percent canopy cover would be in PACs; 99 percent would be outside of PACs within the Pilot Project area.

In the Sierras, there are 1,321 PACs totaling 170,688 ha (421,780 ac). In the 2001 Framework, no more than 10 percent of the individual PACs were to be treated per decade, whereas in the 2004 Framework no more than 10 percent of the PAC acres are to be treated per decade. This difference results in increasing the percentage of treated PACs during the 20-year life of the SNFPA from 20 percent (263 PACs) to 26 percent (343 PACs) of the 1,321 total PACs, and increasing the areal extent of treatments from 6,145 ha (15,184 ac) to 6,931 ha (17,126 ac), which is an increase of 786 ha (1,942 ac) (USFS 2004a). But only portions of selected PACs would be treated, and the total treated area (6,931 ha or 17,126 ac) comprises 16.6 percent of the area within the 343 PACs to be treated, or 4.3 percent of the area within all of the 1,321 PACs. The Forest Service anticipates that fuels treatments will lessen the total number of PACs that may be lost to wildfire (estimated to be 90; see above) due to lessening the severity and extent of wildfires and, conversely, that some of the 343 PACs scheduled for treatment may burn in wildfires before treatment. Consequently, the total number of PACs affected by wildfires or treatments is expected to be fewer than 433 (Yasuda *in litt.* 2006). During 2004 and 2005, the Forest Service used prescribed-fire or mechanical means to treat all or portions of 97 PACs (7 percent of 1,321 PACs), which was an area of 15,055 ha (37, 201 ac) (Efird *in litt.* 2006).

As presented above in "Habitat Use," canopy cover in nesting and roosting habitat typically is at least 70 percent, so fuels reductions within PACs that lower canopy cover to less than 70 percent are anticipated to adversely affect the suitability of those stands as nesting and roosting habitat. Reductions of canopy cover to 40–50 percent would alter nesting or roosting habitat so that it would function chiefly as foraging habitat.

As mentioned above, these reductions in canopy cover within PACs will occur in no more than 4.3 percent of the area within all PACs. In many cases, the renewed growth of tree-crowns after thinning is expected to fill-in the canopy cover to some degree within one to two decades, so effects of reduction in canopy closure due to thinning of understory trees would be temporary; however, we do anticipate adverse, short-term effects from this reduction of canopy cover within PACs. We consider the risk of extinction for the spotted owl from catastrophic fire to be a far greater concern than any other evaluated threat, and we anticipate that implementation of the SNFPA will reduce the threat of wildfire, thus benefitting the spotted owl in the long-term.

As presented in Factor D, mechanical treatments in "strategically placed landscape area treatments" (SPLATs) in late-seral forest stands outside of PACs include safeguards for spotted owl habitat including retention of at least 50 percent canopy cover averaged within the treatment unit (with exceptions that allow retention of as low as 40 percent canopy cover), and retention of live trees 76 cm (30 in) dbh or greater. It appears that areas modified in such a manner would remain as suitable foraging habitat, or be converted from nesting/roosting habitat to foraging habitat. Reproduction in California spotted owls in an area where woodrats were a main food source was maximized with small blocks of spotted owl habitat and large amounts of edge between spotted owl habitat and other habitats (Franklin *et al.* 2000). Other studies also support this 40-percent canopy-cover threshold for suitable habitat (*e.g.*, Call *et al.* 1992; Verner *et al.* 1992b; Zabel *et al.* 1992; Moen and Gutiérrez 1997). With information currently available to us, it is difficult to estimate the effects of converting nesting/roosting habitat to foraging habitat. If nesting/roosting habitat is limited, then treatments that reduce nesting/roosting to foraging could have an adverse effect on spotted owls. If nesting/roosting habitat is not limited, then the effect could simply be an increase in foraging habitat. Locations scheduled for treatments will be identified on a project-specific basis in future years, at which time site-specific data on whether nesting/roosting habitat is limited in those areas may become available.

The petition (Center for Biological Diversity 2004) states that the above-mentioned threats have more substantial effects to spotted owls within the areas in the Sierra Nevada described in Beck and Gould (1992) as areas of concern, due to bottlenecks or gaps in spotted owl distribution, locally isolated populations, highly fragmented habitat, and areas of low spotted owl density. However, "[r]ather than reflecting current negative effects on spotted owls, areas of concern * * * simply indicate potential areas where future problems

may be greatest if the owl's status in the Sierra Nevada were to deteriorate" (Beck and Gould 1992:45). Even though these areas of concern do not necessarily indicate areas in which spotted owls are at risk at this time, we agree with Beck and Gould (1992), Verner *et al.* (1992a), USFS (2001), and USFS (2004a) that the risk associated with management within the areas of concern in the Sierra Nevada is higher than that in other areas due to bottlenecks or gaps in spotted owl distribution, locally isolated populations, highly fragmented habitat, and areas of low spotted owl density. Beck and Gould (1992:45) state that areas of concern may experience a greater impact if spotted owl populations were deteriorating in the Sierras. However, the California spotted owl's status in the Sierra Nevada is not deteriorating as is evidenced by the increasing adult survival and stationary trends of the populations. Thus, we conclude that owls in the areas of concern in the Sierra Nevada are not experiencing heightened effects from threats discussed in this section.

To summarize the discussion of fuels-reduction treatments for the Sierra Nevada, we anticipate short-term adverse effects from certain logging activities, but expect long-term benefits from the reduced wildfire risk. Catastrophic wildfire appears to be the greatest potential threat to the California spotted owl, and fuels-reduction treatments are a necessary measure to reduce that threat. We have looked at the cumulative effects of wildfire and fuels treatments and concluded that, although fuels treatments will have some short-term effects to owls, those treatments will offset much of the impact of wildfire in future years by reducing the extent of wildfire damage. Our analysis shows that fuels-reduction treatments will not threaten the continued existence of the spotted owl, as only 0.9 percent of the 2,024,000 ha (5 million ac) of present suitable habitat will be downgraded from suitable to unsuitable habitat via the SNFPA, and reductions in canopy cover in PACs to the 40 or 50 percent level will occur in only 4.3 percent of the area within all PACs.

In southern California, the four national forests began operating under new Land Management Plans (LMPs) in September, 2005. The new LMPs continue thinning and salvage-related timber sales, with a focus on removal of small-diameter, high-density understory trees and on dead and diseased overstory trees (USFS 2005a). (The new management direction is discussed further in Factor D.) There are 2,736 km (1,700 mi) of linear WUI land allocations on the four national forests. Fuels-related vegetation treatments and thinning projects will be located within these WUIs. The type and intensity of fuels treatments is expected to vary by vegetation type and proximity to human developments. The most-intensive treatments will occur within the WUI Defense Zones, which are buffer zones around developed sites that may be up to 457 m (1,500 ft) wide; there, trees will be mechanically thinned to 40 percent canopy cover or less with no ladder fuels (USFS 2005b; Loe *in litt.* 2006). Within Threat Zones, treatments will maintain at least 40 percent canopy cover (USFS 2005b; Loe *in litt.* 2006). The Forest Service projected the maximum area to be treated in forest types used by spotted owls in southern California (mixed conifer, bigcone Douglas-fir (*Pseudotsuga macrocarpa*), and hardwood forests and woodlands) to be 8,168 ha (20,183 ac) in Defense Zones and 98,777 ha (244,083 ac) in Threat Zones (USFS 2005a), which sums to 22.6 percent of the 473,473 ha (1,170,000 ac) of forest types used by spotted owls in southern California. Consequently, using the 40-percent canopy cover criterion, up to 1.7 percent of suitable habitat in Defense Zones may be changed from suitable to unsuitable habitat, and up to 20.9 percent of the nesting, roosting, or foraging habitat would only be suitable for foraging habitat in Threat Zones. With information currently available to us, it is difficult to estimate the effects of converting nesting/roosting habitat to foraging habitat. If nesting/roosting habitat is limited, then treatments that reduce nesting/roosting to foraging could have an adverse effect on spotted owls. If nesting/roosting habitat is not limited, then the effect could simply be an increase in foraging habitat. Locations scheduled for treatments will be identified on a project-specific basis in future years, at which time site-specific data may become available on whether nesting/roosting habitat is limited in those areas.

In Factor D, we discuss the regulations, standards, and guidelines that govern fuels reductions and timber harvests in southern California. In brief, the LMPs: Provide limited operating periods within 0.4 km (0.25 mi) of occupied territory-centers and nest sites during the breeding period; prohibit treatments within 12–24 ha (30–60 ac) of forest immediately surrounding nest stands in the Threat Zone; and include other protections for habitat in the Defense Zone, PACs, and larger core areas (USFS 2004b).

Timber Harvest on Federal Lands

The petition contends that logging activities on federal lands in the Sierras under the SNFPA and in southern California threaten to further degrade and destroy spotted owl habitat, resulting in continued declines in numbers of spotted owls (Center for Biological Diversity 2004). As presented below, the best-available data indicate that Forest Service management documents include adequate safeguards to protect spotted owls and their habitat, and fuels-reduction activities are anticipated to decrease the threat of stand-replacing wildfires. Therefore, we are not anticipating declines in spotted owl numbers due to these activities.

Recent history of timber harvest on Federal lands in the Sierra Nevada and in southern California was presented above in "Changes to Habitat." During the next 20 years, all timber harvests on Federal lands in the Sierras will be carried out as fuels treatments via the SNFPA as presented above in this discussion and below (Factor D). These fuels treatments are anticipated to result in an average harvest of 330 mmbf of green saw timber per year for the first decade, and 132 mmbf per year for the second decade. An additional annual 90 mmbf of salvage timber sales is projected during the 20-year period (USFS 2004a). In southern California, the four national forests expect to sell in 2006 approximately the same amount of saw timber that they sold in 2005 (10 mmbf) from salvage sales and fuels-reduction projects, and they anticipate that this annual total will drop substantially in subsequent years as salvage-sale material is harvested (Loe *in litt.* 2006). All harvests on Federal lands are conducted under the regulations described in Factor D.

Timber Harvest on State and Private Lands

The petition states that timber harvest on private lands threatens to further degrade and destroy spotted owl habitat, resulting in continued declines in numbers of spotted owls (Center for Biological Diversity 2004). Below, we summarize information we collected regarding timber harvest on private lands, including various safeguards that are intended to protect the California spotted owl.

Recent history of timber harvests on private lands was presented above in "Changes to Habitat." In Factor D, we present the regulatory mechanisms that direct forest management relative to spotted owl habitat in State and private lands. Here in Factor A, we describe, to the best of our knowledge, how private

timber companies manage their forests relative to spotted owls and their habitat. As stated above in "Numbers and Connectivity," SPI lands include more than 200 spotted owl territories, there are 40 territory-centers either on or within 1.6 km (1 mi) of the land owned by Soper-Wheeler, there are three nest sites either on or immediately adjacent to W.M. Beaty-managed lands, and there are no known territories on lands owned by Fruit Growers, Collins Pine, or Roseburg Resources. Most of the following information, therefore, concerns SPI.

SPI maintains a geographic information system-based database with all of the approximately 200 known California spotted owl territories within its boundaries (Self *in litt.* 2005). SPI checks its database and other databases (e.g., Natural Diversity Database, Forest Service, CDFG, CDF) for locations of known spotted owl territory-centers within 1.6 km (1 mi) of proposed activities (Self *in litt.* 2005). To estimate whether timber harvests were negatively affecting site occupancy of California spotted owls, SPI began conducting an occupancy study in 2004 in an area that had recently been subjected to many intensive, even-aged timber harvests. The area had been surveyed by spotted owl biologists of the Kern River Research Center from 1991 to 1994. All five of the territories surveyed in 1991–1994 were occupied by spotted owls during 2004–2005 (Murphy *in litt.* 2006). Through site-occupancy checks, one site was incidentally determined to be reproductive in 2005 (Murphy *in litt.* 2006). Reproductive monitoring will be conducted on all territories in 2006 (Murphy *in litt.* 2006).

When SPI lays-out a Timber Harvest Plan (THP), it typically delineates a 6.5–11 ha (16–28 ac) no-cut unit around each territory-center (Murphy *in litt.* 2006). Prior to all harvests, SPI surveys all known spotted owl territories within 0.4 km (0.25 mi) of proposed harvests to determine site-occupancy. Units with nesting spotted owls are not harvested for the foreseeable future, and harvests in units with nesting spotted owls within 0.4 km (0.25 mi) are postponed until after the breeding season (Murphy *in litt.* 2006). SPI does not remove any California spotted owl territories from the database even if occupancy checks indicate apparent non-occupancy, and therefore SPI will continue to provide protection for all known territories for the foreseeable future (Murphy *in litt.* 2006). When marking trees in selection harvests, indications of nesting by raptors are detected by inspection on an individual-tree basis by trained foresters or marking crews (Murphy *in litt.* 2006). In addition, prior to even-aged regeneration harvests, SPI wildlife biologists, foresters, botanists or contractors (who are trained to do so) conduct "walk-through" surveys to locate and protect spotted owls and other raptors that might have re-located into a planned harvest unit (SPI 2002). Both occupancy surveys and walk-through surveys include attempts to detect spotted owls by vocal imitations of their calls (Self *in litt.* 2006). SPI produces annual reports concerning the implementation and results of its occupancy surveys and walk-through surveys (e.g., SPI 2004, 2005). For example, of the 801 harvest units throughout California that were candidates for walk-through surveys in 2004, 92 percent were surveyed (SPI 2005). Of the 61 units that did not receive surveys: 15 were not harvested in 2004, 14 were harvested no later than February 1 (before the breeding season), 28 were harvested no earlier than September 1 (after the breeding season), three were in brush fields being cleared for restocking, and one was harvested on August 15 (late in the breeding season) (SPI 2005). Thus, in approximately 5 percent (43 of 801) of the units, spotted owl habitat may have been negatively affected to some unknown degree due to SPI harvest operations in 2004. In 2004, no new California spotted owl territories were found during occupancy surveys adjacent to units or during walk-through surveys of 740 units (SPI 2005). In 2003, reproductive status of three known pairs of spotted owls adjacent to units was documented; for the two pairs that were nesting, 8-ha (20-ac) no-harvest zones were designated around these nests, and the harvests proceeded as planned, and for the pair that was not nesting, the adjacent unit was harvested as planned in October (after the nesting season) (SPI 2004). During walk-through surveys of 713 units in 2003, one new pair of spotted owls was discovered, and SPI set an 8-ha (20-ac) no-harvest zone and delayed adjacent harvest units until after fledging in August. In addition, two known pairs of spotted owls had moved into planned harvest units and were nesting, so those two units were dropped from harvest (SPI 2004). Under California Forest Practice Rules (FPRs) (CDF 2005) and the known nest-site protection conducted by SPI, these units will not be harvested for the foreseeable future. Virtually all surveys in 2003 (92 percent) and 2004 (97 percent) were done during the nesting season (March to August), and approximately three-quarters (73 and 76 percent) were done within 4 weeks of harvest (SPI 2004, 2005).

SPI manages retention of snags to support at least 40 percent of the maximum habitat capability for cavity-nesting species based on published guidelines and models (SPI 2001); similarly, the Northwest Forest Plan (USDA and USDI 1994) requires minimum retention of snags sufficient to support species of cavity-nesting birds at 40 percent of potential population levels. SPI general guidelines recommend that they avoid downed logs that are at least 61 cm (24 in.) dbh and 3 m (10 ft.) long (Murphy *in litt.* 2006). Soper-Wheeler protects 2 to 4 ha (5 to 10 ac) surrounding known spotted owl nests (McKillop *in litt.* 2005).

To summarize, the best-available data indicate that timber harvest as conducted on private lands includes adequate safeguards to protect spotted owls and their habitat. Such safeguards include pre-harvest surveys to detect owls that may be present in the area, a no-cut unit around spotted owl territory-centers, retention of snags and downed wood, and a policy that protects forest units with nesting owls in the foreseeable future. Therefore, we do not anticipate that private lands practices will threaten the continued existence of the California spotted owl in the foreseeable future.

Tree Mortality

Tree mortality in the Sierras and southern California related to insects or pathogens can have many consequences including: A continuing need to enter stands to conduct salvage operations; increased fuel-loading levels; fewer large, older trees and fewer mid-diameter trees; reduction in crown closure; a short-term increase in nutrient cycling; a possible increase in snags and hazard trees; fewer trees/area; and changes in species composition (USFS 2004a). Insects and disease always have been a source of tree mortality in the forests occupied by the California spotted owl. Long-term stand densification and recent extreme drought have greatly increased tree mortality related to forest pests, particularly in the San Bernardino, San Jacinto, and San Diego ranges. This effect could cause a substantial reduction in the extent of suitable spotted owl habitat and negatively affect the numbers of spotted owls regionally (LaHaye 2004). In addition, droughts may negatively affect spotted owl prey populations, which would be expected to result in reduced productivity of spotted owls (USFS 2004b). The San Bernardino National Forest is

experiencing the worst drought period in over 150 years; consequently, for example, huge areas of live oak are dying, and in many areas greater than 60 percent tree mortality has occurred in the conifer zone (USFS 2004b).

Sudden oak death, caused by the fungus *Phytophthora ramorum*, has the potential to sharply reduce tree canopy in oak woodlands that provide productive habitat for California spotted owls. At present, the disease occurs in the wild only in coastal counties in northern and central California, south through Monterey County almost to the San Luis Obispo County border (COMTF 2004 in USFS 2004b). Tanoak and several oak species are most susceptible to the pathogen and may be killed by it. However, a growing number of other species have been found to harbor the disease without dying, including many native shrubs and trees as well as non-native horticultural plants (COMTF 2004 in USFS 2004b). Patches of dead oaks and tanoaks totaling 3,399 ha (8,400 ac) occur on the Los Padres National Forest in Monterey County. In April, 2004, nursery stock infected with this fungus was found in Monrovia, near Los Angeles, creating potential for the disease to spread to wildland plants far south of its current range. The seriousness and eventual extent of the threat posed by sudden oak death to spotted owl habitat in southern California cannot be predicted at this time. In general, tree mortality from drought, insects, and disease could contribute to declines in spotted owl habitat, especially in southern California.

Development and Other Factors

The petition states that development on private lands in the Sierra and southern California presents a significant threat to the California spotted owl, particularly in low elevation riparian hardwood habitats (Center for Biological Diversity 2004). Suitable habitat scattered among houses and housing developments was not found to be occupied by spotted owls in southern California, although areas adjacent to these developments contained dense and productive populations of the subspecies (Gutiérrez 1994). There is a potential for increased disturbance to a segment of the San Bernardino Mountains spotted owl population as a result of the burgeoning population in southern California (LaHaye *et al.* 1997). Urbanization has similar negative implications for Sierra Nevada spotted owls that migrate to lower elevations in the winter (Laymon 1988; Verner *et al.* 1992a).

Where development occurs, there is a decrease in crown cover and tree density and an increase in impervious surface (McBride *et al.* 1996). The amount of private vs. public lands in the Sierra Nevada and southern California portions of the spotted owl range varies widely by county. Estimates from the Sierra Business Council (1997) indicate that, for the nine Sierra Nevada counties in the range of the spotted owl they analyzed, an average of 46 percent is private land. These nine counties are experiencing varying degrees of urban expansion, and have projected population growth rates from 0.7 percent in Sierra County to 6.2 percent in Calaveras County (Sierra Business Council 1997). The human population in the Sierra Nevada is projected to triple between 1990 and 2040, primarily in the lower elevation grasslands and oak woodlands (SNCWG 2002). Because spotted owls have been observed in the Sierra Nevada to migrate downslope into the lower-elevation pine/oakwoods during the winter (Laymon 1988), we anticipate this could have a negative impact on their seasonal migration patterns. However, breeding spotted owls mostly occupy higher-elevation mixed conifer forests—not lower-elevation pine/oak woodland habitats. In fact, Verner *et al.* (1992a) stated that mixed-conifer forests were by far the most significant habitat for the spotted owl, as most known spotted owl territories (82 percent) on Federal lands in the Sierra Nevada are in higher-elevation, mixed-conifer forests. Additionally, although the petition presents concerns with anticipated development in low-elevation riparian hardwood habitat, only 1.2 percent of all habitat containing spotted owl territories were considered riparian hardwood habitat in the Sierra Nevada (Verner *et al.* 1992a). Thus, we anticipate that, although development may impact spotted owl habitat in localized areas, the impact will not be throughout the Sierra Nevada populations because development will occur primarily in the foothills.

Southern California's human population has grown substantially over the last two decades to over 20 million people and is anticipated to grow by another 35 percent over the next two decades (USFS 2005a). A substantial amount of private forest land has been, and yet may be, developed in the mountains of southern California (USFS 2005a). The petitioners and Verner *et al.* (1992a) expressed concern that development in southern California could prevent dispersal between spotted owl populations in southern California, as mountain ranges occupied by spotted owls probably act as habitat islands with limited dispersal between them. We agree that the best-available data indicate that the spotted owl populations in the mountains of southern California are isolated from one another (Verner *et al.* 1992a, Gutiérrez 1994, LaHaye *et al.* 1994); further, it is probable that this isolation could increase in the future.

The petition states that recreation potentially affects spotted owls in several ways, including noise disturbance, construction of roads and trails, and expansion of ski resorts (Center for Biological Diversity 2004). Recreation is the fastest-growing use of the national forests (USFS 2001a). Construction of facilities used for recreation, including campgrounds, trails, roads, ski resorts, and cabins likely has contributed to the destruction and fragmentation of spotted owl habitat. The effect of recreation on spotted owls is poorly understood and may be an increasing threat to California spotted owls, especially in southern California (Noon and McKelvey 1992).

Visitor use of southern California forests is estimated to increase by 15–20 percent over the next 15 years. It is expected that short-term recreation activities such as pleasure driving, hiking, and picnicking will increase more than traditional backcountry extended duration activities (USFS 2005a). However, light recreation, such as hiking on established trails or birdwatching, probably has little impact on spotted owls (Swarthout and Steidl 2001, 2003). Most recreation-related development such as roads, developed recreation sites, and administrative structures that might be expected to occur on southern California national forests has already taken place. The Forest Service does not anticipate much expansion of its permanent road system beyond what is currently in place (USFS 2005a). We thus expect that most major impacts related to recreational development will not be a primary threat to spotted owls in southern California. Adverse effects on forest environments have occurred in the past, however. For example, development of ski areas eliminated spotted owl habitat in the past, and expansion of existing areas would further reduce it, because ski areas in the San Bernardino and San Gabriel Mountains are all located on north-facing slopes preferred by spotted owls (USFS 2004b).

In southern California, the Forest Service will be actively managing recreation to offset impacts to spotted owls. Effects to wildlife will be reduced through the use of seasonal closures,

designation of OHV trails, location of developed recreation sites, back-country and wilderness restrictions, area restrictions on fuelwood collection, and other strategies (USFS 2005a). Limited operating periods prohibit vegetation management activities within approximately 0.4 km (0.25 mi) of the nest site (or territory-center where nest site is unknown) during the breeding season (February 1 through August 15) unless surveys confirm that spotted owls are not nesting. Although the limited operating period does not apply to all existing road use, trail use, maintenance, or continuing recreation use, if the environmental analysis of proposed projects or activities suggests that either existing or proposed activities are likely to result in nest disturbance, limited operating periods could be adopted as deemed necessary at the project level (USFS 2004a, 2005a).

As in southern California, recreation is an important forest use in the Sierra Nevada. Specific recreation projects are not identified in the SNFPA. However, the Forest Service's preferred alternative favors a trend toward more dispersed, non-motorized recreation, such as hiking and backcountry camping, and would not result in increased levels of recreational visitor days (USFS 2004a). Moreover, the SNFPA specifies standards and guidelines for mitigation of impacts to the California spotted owl where there is documented evidence of disturbance to the nest site from existing recreation, off-highway vehicle route, trail, and road uses (including road maintenance). The Forest Service operates under a further guideline to evaluate proposals for new roads, trails, off-highway vehicle routes, and developments for their potential to disturb nest sites. The guidelines thus direct that California spotted owls are to be given consideration during planning of recreational activities.

The petition states that grazing is likely to indirectly affect the owl by reducing or eliminating riparian vegetation, altering forest structure and fire regimes, and reducing prey density (Center for Biological Diversity 2004). During the late 1800s, heavy grazing of surface fuels by livestock may have reduced the influence or extent of wildfires (University of California 1996), and subsequent in-growth of vegetation on denuded soils may have contributed to the heavy fuel-loading and tendency towards catastrophic fire now found in much of the California spotted owl's range. Over the past 15 to 20 years, livestock grazing has declined by over 50 percent in the national forests of the Sierras and by approximately 26 percent in the national forests of southern California; in addition, grazing is expected to decline further (USFS 2004a, 2005a). Grazing in the Sierras occurs on wet and moist montane and subalpine meadows, annual grasslands, and in oak woodlands. A small amount of literature exists on the effects of grazing to the Mexican spotted owl (*S. o. lucida*), and because the best-available information is limited to the Mexican subspecies, we apply that information to the California spotted owl. Effects of grazing have been placed in four categories: (1) Altered prey availability; (2) altered susceptibility to fire; (3) degradation of riparian plant communities; and (4) impaired ability of plant communities to develop into owl habitat (USFWS 1995, 2004). Impacts can vary according to the numbers of grazers, grazing intensity, grazing frequency, and timing of grazing as well as habitat type and structure and plant composition (Ward and Block 1995). Permitting requirements on national forest grazing allotments limit these impacts (USFS 2004a).

Although the effects of grazing by domestic livestock and wild ungulates on the habitats of prey used by spotted owls is a complex issue, there exists some knowledge regarding the effects of grazing on small mammals frequently consumed by Mexican spotted owls (Ward and Block 1995; Ward 2001). Grazing may influence prey availability in different ways. Grazing that reduces the density of grasses can create favorable habitat conditions for deer mice while creating unfavorable conditions for voles (*Microtus* spp.), meadow jumping mice (*Zapus hudsonius*), and shrews (*Sorex* spp.) (Medlin and Clary 1990; Schultz and Leininger 1991). This change may decrease prey diversity (Medlin and Clary 1990; Hobbs and Huenneke 1992). Since populations of small mammals fluctuate seasonally and/or year to year, a diverse prey base can provide a more predictable food resource for spotted owls over time. Conversely, short-term removal of grass and shrub cover may improve conditions for spotted owls to detect and capture prey (USFWS 1995). Current predictions of grazing effects on plant communities as they relate to spotted owls are inexact. For the Mexican spotted owl, the Service concluded that grazing impacts to nesting, roosting, and other mixed conifer habitat will likely be insignificant and discountable because grazing usually does not occur within mixed conifer habitat; instead, livestock generally remain within meadows or riparian areas (USFWS 2004). The same conclusion logically applies to the California spotted owl.

In summary, increased urbanization, which leads to increased recreational use, and grazing activities, may result in some lost spotted owl habitat, but urbanization in the Sierra Nevada is occurring in the low to mid elevations rather than the higher elevation mixed conifer spotted owl habitat. However, grazing in the Sierra Nevada is declining, and generally occurs outside of the spotted owls primarily mixed-conifer habitat. The majority of spotted owl territories in the Sierra Nevada (82 percent) and in southern California (86 percent) are located on federal land, and are thus protected from development; and recreational use is being actively managed, particularly in the higher-impacted forests of southern California. Therefore, these factors do not pose a significant threat now or in the foreseeable future to the continued existence of the California spotted owl such that it warrants listing.

Summary of Factor A

Spotted owl habitat is being adversely affected by wildfire, fuels-reduction activities, timber harvest, tree mortality, and development. However, risks due to wildfire and fuels reductions are not additive; that is, fuels-reduction activities can have short-term adverse effects, but they can also reduce the greater risk of catastrophic wildfire in the long term which effectively ameliorates the short-term effects. In addition, the standards directing fuels treatments through the SNFPA in the Sierras and LMPs in southern California are protective of spotted owls themselves and their nest sites. In the Sierras, fuels treatments will be conducted over a small percentage (4.3 percent) of the area within all 1,321 PACs. In terms of timber harvest, during the next 20 years, all timber harvests on Federal lands in the Sierras will be carried out as fuels treatments via the SNFPA. Timber harvests on private lands are protective of spotted owls and of their nest sites.

Assessing spotted owl population demographics in the Sierras is meaningful to understanding the status of California spotted owls throughout the State of California because the Sierra Nevada contains approximately 81 percent of known California spotted owl territories. Even with losses of habitat from the above causes, spotted owls in the Sierra Nevada have shown increased survival during the past 16 years, and with the exception of one study area which showed a decline that was not statistically significant, spotted owl populations in the Sierras are not

declining. This indicates that, in general, spotted owls in the Sierras have not been greatly impacted by the above threats, and there is sufficient quality and quantity of habitat to allow for essential life history functions. Spotted owls in southern California are at a higher risk from threats because of their isolation, but the best-available data do not show statistically significant declines. Also, we do not anticipate that development, grazing, or recreation will greatly impact spotted owls in the Sierras or southern California. Finally, the standards directing future fuels treatments through the SNFPA in the Sierras and LMPs in southern California, as well as forest practices on private lands, protect spotted owls and their nest sites.

The Service concludes that no available data indicate that the removal of trees and the reduction in canopy cover as prescribed by the SNFPA and described herein would affect California spotted owl reproduction or occupancy such that the California spotted owl is in danger of extinction now or within the foreseeable future. This conclusion does not mean that other negative, short-term effects would not occur. We recognize adverse effects in the areas described above in which canopy cover will be reduced to less than 40 percent and in PACs where canopy cover is reduced significantly. Researchers have suggested that subtle effects could be important if they occur on a wide scale (Noon *et al.* 1992).

Substantial scientific uncertainty remains regarding the effects of fuel treatments in PACs and in all suitable habitat. In the absence of demonstrated effects, and considering the small amount of area to be treated in relation to the total area within all 1,321 PACs and that the potential negative impacts are also accompanied by the positive effects of reduction of fire risk and faster development of high-quality habitat, we find that the fuel treatments proposed under the SNFPA do not constitute a significant threat to the California spotted owl at this time. There is uncertainty whether the efforts will be sufficient to significantly lessen the threat to spotted owl habitat due to the enormity of the task over such a large area, the unproven nature of some of the area treatments outside of PACs, and questionable funding for this 20-year project. While many aspects of the protection afforded to the spotted owls on private lands are voluntary, protection is nonetheless being afforded by private landowners, and the Service has no indication that this will change in the foreseeable future.

There are concerns about the future of the spotted owls in southern California, which exist in mountaintop-groups isolated from one another and isolated from spotted owls in the Sierras. However the best-available data show that trends in southern California owl populations are not statistically different than stationary populations. Further, despite fires, tree mortality, development and other factors, the best-available data indicate that survival of spotted owl populations in the balance of the State of California (the Sierras) has been improving at the population level, and those spotted owls constitute 81 percent of the known territories of California spotted owls. We expect this trend to continue as the Forest Service in the Sierras implements its fuels-reduction strategy that includes protections for the spotted owl and its habitat. Tree mortality and development continue to degrade and eliminate some spotted owl habitat in the Sierras and in southern California. In summary, threats affecting California spotted owls and their habitat, or in combination with other factors, are causes of concern but do not pose now or in the foreseeable future a significant threat to the continued existence of the California spotted owl such that it warrants listing.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We found no evidence that overutilization for commercial, recreation, scientific, or educational purposes is a threat to the California spotted owl, and the petition does not present any threats relative to this factor.

Factor C. Disease or Predation

The petition expresses concern that West Nile Virus (WNV) presents a serious potential threat to California spotted owls, and recommends that its effects on spotted owls be monitored closely (Center for Biological Diversity 2004).

A discussion of known diseases and parasites can be found in the 2003 12-month finding for the California spotted owl (68 FR 7580) and that information is incorporated by reference. We supplement that information with the following best-available data regarding WNV research and describe the results of recent research regarding the presence of WNV in spotted owls.

West Nile Virus was first detected in the United States in 1999 in New York, and has quickly spread to the western United States. WNV has not yet been detected in spotted owls in California; 187 northern and California spotted owls were tested for the presence of WNV and WNV antibodies (Franklin *in litt.* 2004, 2005; Rocky Gutiérrez, Univ. of Minnesota, *in litt.* 2005, Keane 2005). In addition, none of the 251 small mammals (e.g., mice, northern flying squirrels, dusky-footed woodrats) sampled tested positive for WNV (Franklin *in litt.* 2005). A more-complete description of these results can be found in our 2005 90-day finding (70 FR 35607) which is incorporated by reference. In summary, the best-available data show that WNV does not presently threaten California spotted owls and we have no indication that it will become a substantive threat in the foreseeable future.

The petition cites a personal communication (Zach Peery, Univ. of California, *in litt.* 1999) in support of its claims that, because great horned owls (*Bubo virginianus*) and red-tailed hawks (*Buteo jamaicensis*) tend to forage in open areas and because great horned owls are known predators of spotted owls (Forsman *et al.* 1984), the reduction of canopy cover and creation of breaks in the canopy due to logging may increase predation of spotted owls (Center for Biological Diversity 2004). The petition does not present any scientific information that supports the idea that logging increases predation of spotted owls by great horned owls or red-tailed hawks, and we are unaware of any such information. As noted in the 2003 12-month finding (68 FR 7580), spotted owls are preyed upon by other raptors and mammals. Natural predation probably has little effect on healthy populations. However, as populations become smaller and more fragmented, the impacts of natural predation may also become significant. Effects to California spotted owls from their new competitor and possible predator, the barred owl, are discussed in Factor E.

In summary, disease or predation factors by themselves, or in combination with other factors, do not pose now or in the foreseeable future a significant threat to the continued existence of the California spotted owl such that it warrants listing.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Federal Regulations

Existing Federal regulatory mechanisms that provide some protection for the California spotted owl and its habitat include the following: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712), Wilderness Act of 1964 (16 U.S.C. 1131–1136), National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq), Multiple-Use

Sustained-Yield Act of 1960 (16 U.S.C. 528–531), Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C 1601–1614, §§ 1641–1647), SNFPA (USFS 2004a), and various LMPs in national forests. The California spotted owl, as a member of the Order Strigiformes, is included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. We have no indication that the international trade of spotted owls is a concern, so protections from CITES are not relevant to this finding.

NEPA. NEPA requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major federal actions and management decisions significantly affecting the human environment. NEPA documentation is provided in an environmental impact statement, an environmental assessment, or a categorical exemption, and may be subject to administrative or judicial appeal. These documents are primarily disclosure documents, and NEPA does not require or guide mitigation for impacts.

Under NEPA, Forest Service analysis of each proposed project may include a biological evaluation that discloses the potential impacts to plant and animal species, including the California spotted owl. Projects that are covered by certain "categorical exclusions" are exempt from NEPA biological evaluation. In 2003, the Forest Service and the Department of Interior revised their internal implementing procedures describing categorical exclusions under NEPA (68 FR 33814) to add two categories of actions to the agency lists of categorical exclusions: Activities to reduce hazardous fuels, and rehabilitation activities for lands and infrastructure impacted by fires or fire suppression. These exclusions apply only to activities meeting certain criteria including mechanical hazardous-fuels-reduction projects up to 400 ha (1,000 ac) in size and hazardous-fuels-reduction projects using fire of less than 1,820 ha (4,500 ac) (See 68 FR 33814 for other applicable criteria.). Exempt post-fire rehabilitation activities may affect up to 1,700 ha (4,200 ac). As stated above in Factor A, fuels-reduction activities can reduce key habitat elements for spotted owls such as canopy cover, large downed logs, woody debris, and large snags, but they have the important counter-balancing benefit of reducing the probability of catastrophic, stand-replacing fires.

On July 29, 2003, the Forest Service published a notice of final interim directive (68 FR 44597) that adds three categories of small timber harvesting actions to the Forest Service's list of NEPA categorical exclusions: (1) The harvest of up to 28 ha (70 ac) of live trees with no more than 0.8 km (0.5 mi) of temporary road construction; (2) the salvage of dead and/or dying trees not to exceed 101 ha (250 ac) with no more than 0.8 km (0.5 mi) of temporary road construction; and (3) felling and removal of any trees necessary to control the spread of insects and disease on not more than 101 ha (250 ac) with no more than 0.8 km (0.5 mi) of temporary road construction.

A presentation of information regarding the MBTA, the Wilderness Act of 1964, and the Multiple-Use Sustained-Yield Act of 1960 can be found in the 2003 12-month finding (68 FR 7580) which is incorporated by reference. The Forest Service manages national forests under the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 (NFMA). Implementing regulations for NFMA (36 CFR 219.20(b)(i)) require all units of the National Forest System to have a land and resource management plan (LRMP). The purpose of LRMPs is to guide and set standards for all natural resource management activities over time. NFMA has required the Forest Service to incorporate standards and guidelines into LRMPs, including provisions to support and manage plant and animal communities for diversity, and the long-term range-wide viability of native and desired non-native species. On January 5, 2005, the Forest Service issued a new planning rule under NFMA (70 FR 1023) that changed the nature of Land Management Plans so that plans generally are strategic in nature and may be categorically excluded from NEPA analysis. Rather than providing management direction and mandated standards, plans will provide guidance through five components: Desired conditions, objectives, guidelines, suitability of areas, and special areas.

Under the new rule, the primary means of sustaining ecological systems, including species, will be through guidance for ecosystem diversity, whereas the old rule specifically directed that viable populations of existing native (and non-native) species be maintained within each planning unit. The new rule directs the Responsible Official to provide additional provisions, if needed, for threatened and endangered species, species-of-concern, and species-of-interest within overall multiple-use objectives. Because the California spotted owl is currently identified as a sensitive species by the Regional Forester, it will likely be categorized as a species-of-concern in the future, but we cannot predict specific protections that will be provided for the owl.

The new rule will take effect as forests, except the southern California forests, complete previously-scheduled revisions to LRMPs. The national forests in southern California (Los Padres, Angeles, San Bernardino, and Cleveland) were in the plan-revision process when the new rule was promulgated, so completed their plan revisions in September of 2005 under the 1982 planning rule. The national forests of the Sierra Nevada are scheduled to initiate plan revisions over the next 3 years (Efird *in litt.* 2005). The extent to which the new planning rule will change forest management is not known. However, the discretion of the Responsible Official in making land-management decisions continues to be constrained by a requirement that any decision must demonstrate it contributes to meeting the desired condition. Responsible Official discretion is also guided by a body of law, regulation, policy, and public oversight that transcends LMP direction (Efird *in litt.* 2005). See below for more information on forest management planning.

Regulations specific to national forests in the Sierras. The petition contends that the SNFPA (USFS 2004a): Replaced explicit standards and guidelines in USFS (2001) with vague descriptions of desired future conditions; does not adequately protect large trees, high canopy closure, multiple-canopy layers, snags, and downed wood; and does not provide limits on the proportion of the landscape that can be degraded through logging. We agree that the SNFPA replaced some standards and guidelines with more general desired future conditions. However, as presented below, the best-available data indicate the SNFPA does adequately protect spotted owl habitat while lessening the threat of wildfire, and that it includes many restrictions and guidelines that limit the proportion of areas that can be logged.

In 1991, the Forest Service initiated the first of several planning efforts focused on maintaining the viability of California spotted owls on 11 national forests and approximately 4.5 million ha (11 million ac) in the Sierra Nevada and Modoc Plateau of California. These

efforts included a technical assessment of the status of the California spotted owl and issuance of interim guidelines (Verner *et al.* 1992a). The primary objectives of the interim guidelines were to protect known nest stands, protect large old trees in timber strata that provide suitable spotted owl habitat, and reduce the threat of stand-destroying fires. They allowed treatment of suitable nesting and roosting habitat that reduced canopy cover to 40 percent in timber types selected by spotted owls and below 40 percent in other types used by spotted owls according to their availability (except in PACs). Under the interim guidelines, no mechanism existed to evaluate cumulative impacts of timber harvest on California spotted owls in national forests. After 1993, when baseline surveys for the species were completed within lands managed by the Forest Service, forest management continued without further requirements to survey for the spotted owl (68 FR 7580).

In 1995, the Forest Service released a draft environmental impact statement for a long-term management plan for California spotted owl habitat (68 FR 7580). Final direction was not issued due to new scientific information provided by the Sierra Nevada Ecosystem Project (SNEP) report released in 1996. In 1998, the Forest Service initiated a collaborative effort to incorporate new information from the SNEP report into management of Sierra Nevada national forests. This effort became known as the Sierra Nevada Framework for Conservation and Collaboration (Framework). As part of the Framework, the Forest Service developed the SNFPA Environmental Impact Statement (EIS), for which a Record of Decision (ROD) was issued on January 12, 2001 (USFS 2001). The SNFPA addresses five problem areas: Old forest ecosystems and associated species; aquatic, riparian, and meadow ecosystems and associated species; fire and fuels; noxious weeds; and lower westside hardwood ecosystems. Subsequent to the establishment of management direction by the SNFPA ROD, the Regional Forester assembled a review team to evaluate specific plan elements, including the fuels treatment strategy, consistency with the National Fire Plan, and agreement with the Herger Feinstein Quincy Library Group Recovery Act. The review was completed in March 2003 (USFS 2003a), and in June 2003, the Forest Service issued a Draft Supplemental EIS for proposed changes to the SNFPA (USFS 2003b). The Final Supplemental EIS was issued in January 2004, and the new ROD was issued on January 21, 2004 (USFS 2004a). Forest Plans were amended to be consistent with the new ROD, and all subsequent project decisions fall under the 2004 direction. Within the range of the California spotted owl, the Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Inyo, and Sequoia national forests, a small part of the Humboldt-Toiyabe National Forest, and the Lake Tahoe Basin Management Unit are within the area covered by the SNFPA.

USFS (2004a) provides a system of land allocations to protect spotted owl habitat including PACs and Home Range Core Areas. Currently, there are a total of 1,321 PACs and Home Range Core Areas which result in the protection of 424,052 ha (1,047,858 ac). Each Home Range Core Area contains 243, 405, or 971 ha (600, 1000, or 2400 ac, respectively) depending on latitude, and Home Range Core Areas (like PACs) were delineated around all spotted owl territory-centers that have been detected on National Forest lands since 1986. The LMP sets Management Intents, Management Objectives, and Desired Conditions for each land allocation. Desired conditions provide goals that PACs contain at least two tree-canopy layers, dominant and co-dominant trees with average diameters of at least 61 cm (24 in) dbh, at least 60 to 70 percent canopy cover, and provisions for snag and downed woody materials (USFS 2004a). Desired conditions for Home Range Core Areas include large habitat blocks that have at least two tree-canopy layers, have dominant and co-dominant trees with at least 61 cm (24 in) dbh, a number of very large old trees greater than 114 cm (45 in) dbh, at least 50 to 70 percent canopy cover, and higher-than-average levels of snags and downed woody material (USFS 2004a). The Service agrees that this management direction provides necessary protections for the spotted owl during fuels-reduction activities.

The primary objective of the 2004 ROD is to reduce the likelihood of catastrophic fire throughout national forests, especially near developed areas. Forest-wide Standards and Guidelines for fuels reduction and thinning stipulate that fuels treatments of 20 ha (50 ac) to over 405 ha (1,000 ac) in size (averaging 40 to 121 ha (100 to 300 ac) be strategically placed (in SPLATs) to interrupt fire spread, reduce fire severity, and provide for drought-resistant forests, while avoiding PACs to the greatest extent possible. The Forest Service anticipates implementing SPLATs on 25–30 percent of National Forest lands in the Sierras over 20 years (USFS 2004a). Direction provides that fuels treatments may include the use of mechanical thinning and prescribed fire. Standards that guide thinning activities stipulate that projects be designed to retain live trees 76 cm (30 in) dbh or greater, retain at least 40 percent of the existing basal area (outside of Defense Zones), and avoid reducing the pre-existing canopy cover by more than 30 percent. Projects are to retain at least 50 percent canopy cover averaged within the treatment unit, with exceptions that allow retention of as low as 40 percent canopy cover. Exceptions within Home Range Core Areas are allowed to reduce ladder fuels, provide for equipment operability, and minimize re-entry; several additional exceptions apply outside of PACs and Home Range Core Areas (USFS 2004a). In PACs located in Defense Zones, mechanical-thinning treatments may be used to reduce fuels build-ups. In PACs located in Threat Zones, mechanical treatments are allowed where prescribed fire is not feasible and where avoiding PACs would significantly compromise the fire-fuels strategy (see USDA 2004:60). Outside of the WUIs, only prescribed fire may be used in PACs. The 2004 ROD mandates that PACs be avoided to the maximum extent possible when designing fuels treatments, and stipulates that, on a region-wide basis, forests will treat no more than 5 percent of the total PAC area per year and 10 percent of the PAC acres per decade. Pre-project surveys are conducted in areas of suitable habitat when occupancy of spotted owls is unknown and projects are expected by the Forest Service to reduce habitat quality, and new PACs are delineated when appropriate (USFS 2004a). Standards concerning retention of large woody debris and snags are presented above in Factor A.

The 2004 SNFPA ROD provides for full implementation of the Pilot Project on the Lassen and Plumas national forests and the Sierraville District of the Tahoe National Forest. The Pilot Project was initiated under the Herger Feinstein Quincy Library Group Forest Recovery Act of 1998, which required the Forest Service to conduct a pilot project to test and demonstrate the effectiveness of resource management activities on the Lassen, Plumas, and Sierraville Ranger District of the Tahoe National Forest. It specifically required resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones, group-selection harvests, and individual tree selection harvest, and a program of riparian management and riparian restoration projects. One of

the key requirements of the HFQLG Act is to convene an independent scientific panel to prepare a final report evaluating whether, and to what extent, implementation of the pilot project achieved its goals, in particular improving ecological health and community stability. The Forest Service completed a ROD on the FSEIS of the Pilot Project in August, 1999 (USFS 1999). In February, 2003, the Pilot Project was extended until the end of fiscal year 2009 (USFS 2004c), and upon conclusion of the Pilot Project, management activities will be guided by the SNFPA. Within the Pilot Project area, all fuels-reduction and timber-harvest activities are prohibited within the 411 spotted owl habitat areas (that are 405 ha (1,000 ac) in size) and PACs (that are 121 ha (300 ac) in size) contained within those habitat areas (USFS 2004a). Individual-tree selection and group-selection harvests are not permitted in late-successional old-growth forests (CWHR classes 5M, 5D, and 6), and fuels-reduction activities are designed to avoid such forests; however, construction of Defensible Fuel Profile Zones is allowed when needed. The national forest lands outside of PACs and spotted owl habitat areas are available to vegetation- and fuels-management activities, including group-selection and individual-tree selection harvests. Standards and guidelines for all treatment areas direct that trees greater than 76.2 cm (30 in) dbh be retained, with exceptions for operability. Suitable nesting habitat (CWHR 5M, 5D, 6) is managed in Defensible Fuel Profile Zones to provide for at least 40 percent canopy cover, retain all trees greater than 76.2 cm (30 in) dbh and at least 40 percent of the basal area (generally in the largest trees). Within Defensible Fuel Profile Zones, direction also provides for retention of at least 40 percent canopy cover and at least 40 percent of the pre-existing basal area (in CWHR 5M, 5D, and 6 stands), or retention of at least 30 percent existing basal area (in CWHR 4M and 4D stands). Within areas thinned using individual-tree selection, direction provides for retention of at least 50 percent canopy cover with exceptions to a minimum of 40 percent canopy cover (averaged within the treatment), and avoidance of greater than a 30 percent reduction in canopy cover, along with retention of at least 40 percent of the existing basal area (in CWHR 4D, 4M, 5D, 5M, and 6 stands). In eastside-pine forest types, direction specifies that projects be designed to retain at least 30 percent of the existing basal area. In addition, there are retention requirements for downed woody material within the project area.

Regulations specific to national forests in southern California. The national forests in southern California (Los Padres, Angeles, San Bernardino, and Cleveland) have LMPs that are united by a common vision, common design criteria, and a common Final EIS (USFS 2005a; 2005b). The LMPs for the four forests are programmatic documents that leave all specific design decisions and analyses to project-level plans (USFS 2005a–f). Part Three (Design Criteria) of the LMP (USFS 2005b) also refers to auxiliary documents and agreements, such as conservation strategies, that provide additional guidance for management actions. In this LMP (USFS 2005b), design criteria that could provide some protection for spotted owls include the following standards that apply to all four forests. Currently no land is identified as suitable for timber sale production; therefore, timber harvest may only occur to meet wildlife, fuels, fire, watershed, or other needs. In the mixed conifer-yellow pine, closed-cone conifer, big-cone Douglas-fir and canyon oak, and coast redwood habitat types that are used by spotted owls, the maximum size-openings allowed for silvicultural systems and fuels treatments are 0.1 to 1.2 ha (0.25 to 3 ac). Even-aged management is not allowed, except in closed-cone forests when justified. Uneven-aged group selection, uneven-aged single-tree selection, mechanical thinning, and prescribed-fire thinning are all acceptable in mixed-conifer-yellow-pine forests, while both mechanical and prescribed-fire thinning are acceptable in closed-cone forests. All the vegetation-management practices listed (except even-aged management) are permissible, when justified, in the above habitat types.

The new LMPs provide for designation of WUIs, as described above for the Sierra Nevada national forests, except that criteria specify that WUI Threat Zone boundaries may extend well beyond 2 km (1.25 mi) where fire history, local fuel conditions, etc., warrant extensions. The LMPs provide specific direction to consider "species guidance documents" when occupied or suitable habitat of threatened, endangered, candidate, or sensitive species is present on project sites (USFS 2005b). Direction specifies that short-term adverse impacts to species, including threatened, endangered, and proposed species will be accepted if such impacts will be compensated by accrual of long-term habitat benefits to such species (USFS 2005b). This LMP provides retention standards of a minimum of six downed logs and 10 to 15 hard snags per 2 ha (5 ac) where available (USFS 2005b). Specific protection for the spotted owl is provided to protect all spotted owl territories identified in the Statewide CDFG database (numbered owl territories) and new territories that meet state criteria by maintaining or enhancing habitat conditions over the long term to the greatest extent practicable, while protecting life and property (USFS 2005b). Other protective standards for the spotted owl include limited operating periods within 0.4 km (0.25 mi) of occupied territory-centers and nest sites during the breeding period (with exceptions for existing uses). The LMP allows the loss of spotted owl habitat to development (e.g., new campgrounds, buildings) that is needed for compelling reasons, but provides for mitigation measures of up to two-to-one for spotted owl habitat that is lost. Preferred areas for mitigation are within the forest where the impacts occurred (USFS 2005b). Where fuels and vegetation management are taking place, spotted owl occupancy and productivity are to be monitored during planning, implementation, and for at least 2 years after treatment in order to assess effects to owls (USFS 2004b).

In southern California, the Conservation Strategy for the California Spotted Owl (USFS 2004b) and the LMP (USFS 2005b) outline the management of spotted owl habitat in the Los Padres, Angeles, San Bernardino, and Cleveland national forests. Guidelines recommend identifying 121-ha (300-ac) PACs containing the best habitat within 2.4 km (1.5 mi) of nests or territory centers, and then identifying home range cores by adding to the PAC 121 ha (300 ac) of the best habitat within the same radius. Recommended restrictions include: Treatments within 0.4 km (0.25 mi) of a nest site or territory-center may not be conducted during the nesting season; treatments in PACs and home range cores are to be designed with the primary goal of improving spotted owl habitat, and are to retain existing overstory and midstory canopy cover when possible; fuels treatments are to leave all live trees greater than 61 cm (24 in) dbh; and fuels treatments in PACs are to be limited to no more than 5 percent of the PAC acreage in a given mountain range per year and 25 percent of the mountain range PAC acreage per decade (USFS 2004b). In addition, in the 12–24 ha (30–60 ac) of forest immediately surrounding nest stands, no treatments are permitted in the

Threat Zone, and treatments are avoided when possible in the Defense Zone (USFS 2004b). The 2005 San Bernardino National Forest LMP directs the forest to harvest wood products including saw timber, house logs, and utility poles as a by-product of ecosystem management, healthy forest restoration, fuels management, and/or community protection projects (USFS 2005c). The other southern California plans provide no direction for saw timber products (USFS 2005d, e, f).

State Regulations

The petition states that the California State Forest Practices Code provides almost no specific protections for the spotted owl or its habitat. Below, we describe that, although there are no State Regulations providing specific protections to the spotted owl, there are some protections afforded to the spotted owl and its habitat through State laws and regulations.

State regulatory mechanisms that provide some protection for the California spotted owl and its habitat include the California Fish and Game Code (14 C.C.R § 1 *et seq.*), the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 *et seq.*), and the California Forest Practice Rules (14 C.C.R. § 895 *et seq.*). The State of California, in Section 3503.5 of the California Fish and Game Code (CDFG 2002), provides that it is unlawful to take, possess, or destroy any birds in the order Strigiformes (owls) or to take, possess, or destroy their nests or eggs. This restriction applies only to individual owls, their nests and eggs, and does not place restrictions on inactive nests or habitats used by spotted owls. While the California spotted owl is not listed under the California Endangered Species Act and thus does not receive protections available under that statutory provision, the prohibitions against take of owls in the California Fish and Game Code (see above) are similar to the section 9 protections provided by a listing under the ESA.

CDFG identified the California spotted owl as a "species of special concern" (CDFG 1978). This status applies to animals that are not listed under the Federal Endangered Species Act or the California Endangered Species Act but are judged to be vulnerable to extinction. The intent of the designation is to obtain special consideration for the species in the project-planning process and to focus attention on the species to avert the need for listing under either State or Federal laws.

Local land-use processes and ordinances are subject to CEQA, which requires disclosure of potential environmental impacts of public or private projects carried out or authorized by all non-Federal agencies in California. CEQA regulations were described in the 2003 finding (68 FR 7580) and are incorporated by reference. According to a representative from CDFG, the California spotted owl likely meets the criteria for being a rare species under CEQA (Esther Burkett, CDFG *in litt.* 2006). And CEQA gives additional protections to rare species, CDFG could recommend to CDFG that certain mitigation actions be incorporated into a THP that impacts the spotted owl. Because FPRs are a substitute for CEQA, this process technically takes place through the FPRs, which are discussed below.

As previously mentioned, logging activities on private and State forestlands in California are regulated through a process that is a substitute for CEQA. Under CEQA provisions, the State has established an independent regulatory program to oversee timber management activities on commercial forestlands under the Z'berg-Nejedly Forest Practice Act of 1973 and the California FPRs (CDF 2005). CDF has discretionary authority to interpret, implement, and enforce the FPRs.

Forest management is conducted through development of THPs and Non-industrial Timber Management Plans that are approved by the State. The FPRs require the registered professional forester preparing a THP to select silvicultural systems that achieve a maximum sustained production (MSP) of high-quality timber products while giving consideration to values relating to recreation, watershed, wildlife, range, forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment (CDF 2005 § 933.11). Foresters may achieve MSP of high-quality timber products in a THP by several means, including the development of a Sustained Yield Plan (SYP) ("Option B") or by using an alternative plan ("Option A") (CDF 2005 §§933.11, 953.11). SYPs must include projections of timber growth and harvesting over a period of at least 100 years, assessment of watershed and wildlife resources, and analysis of other resource values. To the extent that sustained timber production, watershed impacts, and fish and wildlife issues are addressed in the approved SYP, these issues are considered to be addressed in the THP. Following approval, an SYP is in force for a period of no more than 10 years (CDF 2005 § § 913.11, 933.11, 953.11, 1091.1, 1091.4.5, 1091.5). SPI (1999a, b), Soper-Wheeler, Fruit Growers, and Collins Pine timber companies are achieving MSP through CDF-approved "Option A" Maximum Sustainable Production Plans, whereas W.M. Beaty and Roseburg Resources operate under CDF-approved "Option B" SYPs. The Option A Demonstration of MSP is a part of each THP submitted within a given assessment area. CDF reviews THPs and SYPs to ensure those plans, submitted by the Registered Professional Forester, demonstrate achievement of MSP. CDF invites written comments of these plans from reviewing agencies and the public, and considers those comments. CDF must approve each individual THP (William Snyder, CDF, *in litt.* 2006).

The FPRs provide no specific, enforceable protections for the California spotted owl, because it is not listed as threatened or endangered under CESA or the ESA, nor is it identified by the California Board of Forestry as a "sensitive species" (CDF 2005). However, FPRs do protect some habitat or habitat elements used by the owls (Chris Browder, CDF, in litt. 2005a). Implementation of the FPRs focuses primarily on sustainable timber harvest with an emphasis on conserving fish and wildlife and their habitats. The FPRs require production of a THP for certain logging operations in California, as described above. All THPs require an assessment of cumulative impacts to evaluate on-site and off-site effects of proposed activities from the past and the reasonably foreseeable future (CDF 2005 sections 898, 1034). This cumulative impact assessment pertains to all wildlife resources, including the California spotted owl. If cumulative impacts to the spotted owl or its habitat occur, and if CDF considers those impacts to be significant, then the plan proponent will have to mitigate such impacts to the level of insignificance or provide a feasible alternative, or the benefits of the unmitigated project need to outweigh the environmental risks of the project. THPs are to indicate where timber operations would have any significant adverse impact on the environment and, if they do have adverse impacts, they are to explain why alternatives or additional mitigation measures that would significantly reduce the impact are not feasible (CDF 2005 § 898). THPs are not approved if CDF considers the impact too great.

FPRs include general language about reducing significant impacts to non-listed species (CDF 2005 §§ 919.4, 939.4, 959.4), retention of snags (CDF 2005 §§ 919.1; 939.1, 959.1), and management of late-succession forest stands (CDF

2005 §§ 919.16, 939.16, 959.16). FPRs provide that all snags within the logging area be retained to provide wildlife habitat. Some exceptions are allowed, such as felling of snags where there is justification that there will not be a significant impact to wildlife, but snags removed under such exceptions must still be part of an approved THP.

California's FPRs provide for disclosure of impacts to late-succession forest stands in some cases. The rules require that information about late-succession stands be included in a THP when late-succession stands over 8 ha (20 ac) are proposed for harvesting and such harvest will "significantly reduce the amount and distribution of late succession forest stands" (CDF 2005 §§ 919.16, 939.16, 959.16). If the harvest is found to be "significant," FPR § 919.16 requires mitigation of impacts where it is feasible. The California FPRs require retention of trees within riparian buffers to maintain a minimum canopy cover, dependent on stream classification and slope. Several restrictions of even-aged regeneration harvest practices limit the extent and rate of even-aged regeneration harvest and help provide protection against fragmentation (CDF 2005 §§ 913.1, 933.1, 953.1) and include acreage limitations and buffers between logging units.

Two changes to the California State Forest Practices Code took place since our February, 2003 12-month finding that may influence spotted owl habitat; these changes were not mentioned in the petition. The Fuel Hazard Reduction Emergency Rule allows emergency fuels-reduction treatments of dead or dying trees within 0.4 km (0.25 mi) of "communities at risk" as listed by the California Fire Alliance, as well as within 153 m (500 ft) from certain roads, permitted structures outside of the community areas, infrastructure facilities, and approved fire-suppression ridges. These treatments will target understory trees, and trees only less than 76 cm (30 in) dbh can be removed. We anticipate that few spotted owl territories will be negatively affected by these treatments because only dead or dying trees will be cut, most of the harvest will be of understory trees, and large-tree habitat values will be maintained in most cases. We also anticipate that frequencies of catastrophic wildfires in California spotted owl habitat will be decreased due to these treatments. As of September 26, 2005, the 35 notices submitted to implement the Fuel Hazard Reduction Emergency Rule affected a total of only 494 ha (1,220 ac) (range: 0.4 ha (1 ac) to 75 ha (185 ac), mean 14 ha (35 ac)) (Browder *in litt.* 2005). The second change, the Variable Retention Rule, provides a silvicultural prescription that promotes the retention of valuable biological structural elements and helps achieve ecological, social, and sustainable timber-production objectives. This Rule includes retention of individual trees or groups of trees to maintain structural diversity over the harvest unit, and of structural elements such as snags, down logs, and other biological legacies. We anticipate that use of this Rule will increase the quality and quantity of suitable spotted owl habitat. As of September 26, 2005, the 35 notices submitted to implement the Variable Retention Rule affected a total of 1,062 ha (2,625 ac) (range: 8 ha (20 ac) to 115 ha (284 ac), mean 30 ha (75 ac)) (Browder *in litt.* 2005b).

Summary of Factor D

Some federal regulations afford some protection to California spotted owls and their habitat. Although there are many uncertainties concerning the effectiveness of fuels-reduction activities and their effects on spotted owl habitat, we anticipate that the long-term benefits of implementing the SNFPA and LMPs in southern California will benefit the spotted owl by returning areas to pre-suppression tree-density conditions, reducing loss of suitable habitat to catastrophic fire and, in some areas, improving prey habitat and the ability for spotted owls to capture their prey in more-open stands. We anticipate that pre-project surveys will identify unknown spotted owl territories, and that delineation of new PACs, when appropriate, will protect these territories. Subsequent designation of new PACs based on survey findings (USFS 2004a) will protect spotted owls. Although prescribed fires and mechanical thinning will degrade or temporarily reduce the amount of suitable habitat in some areas, it is expected that these negative effects will be offset in protection of other areas from stand-destroying wildfires, and that spotted owls will still have sufficient quality and quantity of nesting, roosting, and foraging habitat, as well as forested areas through which they can disperse throughout the Sierra Nevada, for the foreseeable future.

No State regulations specific to California spotted owls currently exist. However, the California Fish and Game Code regulations pertaining to owls provide protection similar to that provided by section 9 of the ESA in regard to killing of spotted owls or destruction of their nests or eggs. FPRs pertaining to cumulative impacts, watercourse protection, late-succession forest stands, and snag retention will provide protection to spotted owl habitats in the form of canopy cover, forest continuity, and some structural elements. As stated in Factor A, while many aspects of the protection afforded to the spotted owls on private lands are voluntary, companies including SPI are providing protections, and the Service has no indication that this will change in the foreseeable future. The Fuel Hazard Reduction Emergency Rule should benefit spotted owls by reducing fire frequency and intensity, and implementation of the Variable Retention Rule should increase the quality and quantity of suitable spotted owl habitat. Therefore, we believe that the best-available scientific information indicates that no significant or immediate threats to California spotted owl viability are due to the inadequacy of existing regulatory mechanisms.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The petition states concern that weather poses a threat to California spotted owls. The best-available data are summarized below. Variation in survival of California spotted owls has been shown to be based on habitat variation, whereas variation in reproductive output was based equally on variations in habitat and climate (Franklin *et al.* 2000). Weather conditions explain all or most of the temporal variations in fecundity observed in California spotted owls (North *et al.* 2000; Franklin *et al.* 2004; LaHaye *et al.* 2004) and northern spotted owls in northwestern California (Franklin *et al.* 2000). Spotted owls compensate for this highly variable annual reproduction with high annual adult survival (Franklin *et al.* 2000). The long-term effects of variations in reproductive success of spotted owls in California due to climate are unknown, and will require decades of study (Franklin *et al.* 2000, 2004; North *et al.* 2000; LaHaye *et al.* 2004).

We are aware of three other possible threats to the California spotted owl. These include climate change, water diversions, and air pollution. Support for these possible threats was not provided in the petition. We are aware of no scientific information that indicates that these factors constitute a threat to the continued existence of this species at this time.

The petition presents concern that threats from hybridization and site competition with the barred owl have increased in recent years due to the barred owl's recent expansion farther

into the range of the California spotted owl. The best-available data are summarized below.

During the past century, barred owls expanded their distribution from eastern to western North America (Mazur and James 2000), and are now found throughout the forests of the northern Rocky Mountains, southern Canada to British Columbia, and from Alaska to central California. Barred owls occasionally hybridize with spotted owls (Hamer *et al.* 1994; Kelly and Forsman 2004), but this behavior is considered to be an "inconsequential" phenomenon that takes place mostly when barred owls move into new areas, and declines as barred owls become more numerous and have more access to other barred owls (Kelly and Forsman 2004:808). Kelly and Forsman (2004) documented only 47 hybrids out of more than 9,000 banded northern spotted owls and barred owls in Oregon and Washington from 1970 to 1999. However, barred owls have physically attacked (Pearson and Livezey 2003) and possibly killed (Leskiw and Gutiérrez 1998) northern spotted owls as well as negatively affected northern spotted owl detectability (Olson *et al.* 2005), site occupancy (Kelly *et al.* 2003; Pearson and Livezey 2003; Gremel 2005), reproduction (Olson *et al.* 2004), and survival (Anthony *et al.* 2004).

Since our 2003 finding, the known range of barred owls has expanded 200 miles southward in the Sierra Nevada. Two hybrid spotted/barred owls were documented in the Eldorado National Forest (Seamans *et al.* 2005; Seamans *in litt.* 2005) and a male barred owl was documented in Kings Canyon National Park (Steger *et al.* in review). Barred owls have not been detected in the mountains of southern California. Barred owls moved into and increased their densities in the Sierras at much slower rates than they did in other parts of western North America. For example, in 1988, 23 years after Barred Owls were detected in Washington in 1965 (Rogers 1966), they were at least twice as numerous as northern spotted owls in the western Washington Cascades (Hamer *et al.* 1989). Similarly, in 2005, 24 years after they were first detected in California in 1981 (Evens and LeValley 1982), they were approximately four times as numerous than northern spotted owls in the Redwood National and State Parks (Schmidt 2005, Schmidt *in litt.* 2006). However, in 2005, numbers of barred owls were only about 2 percent of California spotted owl numbers in the Sierra Nevada (Service 2005). We have no indication that barred owls are significantly affecting spotted owls in the Sierras due to their low relative densities and to the uncertainty that they will reach high densities. Barred owls are having no effect on the spotted owls of southern California, and it is unknown whether they will expand their range to include some or all of the mountains of there.

In summary, we know of no substantial information that indicates that climate is a threat to the continued existence of the California spotted owl at this time. Although barred owls may pose a substantive threat to California spotted owls at some point in time, they do not appear to pose a significant threat now or in the foreseeable future, to the continued existence of the California spotted owl such that it warrants listing.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the California spotted owl. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment periods following our 90-day petition finding. This finding reflects and incorporates information we received during the public comment period and responds to significant issues. We also consulted with recognized spotted owl experts and Federal and State resource agencies. On the basis of this review, we find that the listing of the California spotted owl is not warranted at this time because:

(1) The best-available data indicate that California spotted owl populations are stationary throughout the Sierras, which contain 81% of known California spotted owl territories. In fact, there was no strong evidence for decreasing linear trends in the finite rate of population growth (lambda) on any of the four Sierra Nevada study areas, adult survival showed an increasing trend throughout the Sierras, and modeling of realized population change for the four Sierra Nevada study areas combined indicated that total spotted owl numbers did not decrease over time. Additionally, the best available data for southern California owls (the San Bernardino study area) showed that the population was statistically stationary.

(2) We anticipate that planned and currently implemented fuels-reduction activities in the Sierras and in southern California will have a long-term benefit to California spotted owls by reducing the risk of catastrophic wildfire. As stated above, a primary threat to spotted owls is loss of habitat and subsequent population losses of spotted owls due to stand-replacing fire in unnaturally dense forest stands (USFS 2004a; 2005a).

(3) Although survey data for spotted owls in southern California are incomplete, the best-available data do not show statistically significant declines. Barred owls have not been detected in the mountains of southern California, and they have moved into the Sierras at much slower rates than they did in other parts of western North America. Moreover, numbers of barred owls are only about 2 percent of California spotted owl numbers in the Sierras.

(4) The largest private landholder, SPI, offers protection of spotted owls on their lands (Murphy *in litt.* 2006). SPI conducts surveys for spotted owls prior to harvest, establishes 6.5–11 ha (16–28 ac) no-cut unit buffers around each territory-center, and protects forest units with nesting spotted owls from harvest altogether. Moreover, during the next 100 years, SPI estimates that, as their forests mature, habitat with nest-site characteristics will more than double from 25 to 53 percent of all California spotted owl habitat on SPI land.

In making this finding, we recognize that while statistical analysis show that most California spotted owl populations are stationary in the Sierras, there is a possibility of decline for some populations (e.g., Lassen Study Area and San Bernardino Study Area), and that the species faces threats from catastrophic fire and habitat modification related to reduction of the risk of catastrophic fire. We recognize the difficult trade-offs involving short-term risk of fuel treatments versus long-term benefits of those treatments in reducing risks and improving habitat. We recognize other current threats to the species, including effects of isolation of spotted owls in southern California and the potential spread of barred owls. We conclude that impacts from fires, fuels treatments, timber harvest, and other activities are not at a scale, magnitude, or intensity that warrants listing, and that the overall magnitude of threats to the California spotted owl does not rise to the level that requires the protections of the Act. We will continue to monitor the status and management of the species and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

References Cited

A complete list of all references cited is available on request from the

Sacramento Fish and Wildlife Office (see **ADDRESSES** section, above).

Author

The primary author of this notice is Kent Livezey, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Lacey, Washington 98503.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 15, 2006.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 06–4695 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the California Brown Pelican and Initiation of a 5-Year Review for the Brown Pelican

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status reviews for the 12-month finding and 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the California brown pelican (*Pelecanus occidentalis californicus*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to section 4(b)(3) of the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We, therefore, are initiating a status review of the California brown pelican to determine if delisting under the Act is warranted. We note that the taxon on the Federal List of Endangered and Threatened Species is the brown pelican (*Pelecanus occidentalis*). The petition requests specifically the delisting of the California brown pelican, (*Pelecanus occidentalis californicus*), rather than the delisting of the entire listed entity. Brown pelicans in coastal States along the Atlantic Coast and in Florida and Alabama were removed from the List of Endangered and Threatened Wildlife on February 4, 1985 (50 FR 4938). The brown pelican remains listed as endangered throughout the remainder of its range in North, Central, and South America and the Caribbean. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to initiate a 5-year review of the brown pelican (*Pelecanus occidentalis*) throughout its range and prepare these reviews simultaneously. The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate. To ensure that the reviews are comprehensive, we are soliciting scientific and commercial information regarding this species.

DATES: The finding announced in this document was made on May 24, 2006. To allow us adequate time to conduct these reviews, we must receive your comments and information on or before July 24, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: To submit comments and information on the 90-day finding for the California brown pelican delisting petition or the rangewide 5-year status review, see "Public Comments" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For the California brown pelican (*Pelecanus occidentalis californicus*), contact Michael McCrary (see Public Comments), telephone, 805–644–1766; facsimile, 805–644–3958. For the brown pelican (*Pelecanus occidentalis*), contact Steve Chambers (see Public Comments), telephone, 505–248–6658; facsimile, 505–248–6788.

SUPPLEMENTARY INFORMATION:

Petition Information

We received a petition from Craig Harrison, of the law firm Hunton and Williams, representing the Endangered Species Recovery Council, dated December 14, 2005, to remove the California brown pelican from the Federal List of Endangered and Threatened Wildlife and Plants. We note that the taxon on the Federal List of Endangered and Threatened Species is *Pelecanus occidentalis*. The petition requests specifically the delisting of the subspecies California brown pelican, (*Pelecanus occidentalis californicus*), rather than the delisting of the entire listed entity. The petition contained information on population size, population trends, reproduction, and distribution of the California brown pelican, including information on the status and management of the California brown pelican in Mexico. It also contained information on what the petitioners reported as the elimination (*e.g.*, banning of DDT and other contaminants) or management of threats that had originally resulted in the California brown pelican being listed as endangered.

On the basis of information provided in the petition, we have determined that the petition presents substantial scientific or commercial information, and that removing the California brown pelican from the Federal List of Endangered and Threatened Wildlife and Plants may be warranted. Therefore, we are initiating a status review to determine if removing the subspecies is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species. Under section 4(b)(3)(B) of the Act, we are required to make a finding as to whether delisting the California brown pelican is warranted by December 14, 2006.

Five-Year Review—Why Is a 5-Year Review Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B) we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the brown pelican.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How Do We Determine Whether a Species Is Endangered or Threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is information concerning the brown pelican indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened; (b) remove the species from the List; or (c) find that various subunits of the species, such as subspecies or potential distinct population segments, differ in status such that one or more of these subunits should be reclassified or removed from the List. We may find that a change in classification of the currently listed species is not warranted, and the species should remain on the List under its current status.

We will base our 12-month finding and 5-year review on a review of the best scientific and commercial information available, including all information received during the information request period. Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite finding under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

Public Comments

To ensure that the status review for the California brown pelican and 5-year review for the brown pelican are complete and based on the best available scientific and commercial information, we are soliciting any additional information, or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species, and threats to the species. We also request information regarding the adequacy of existing regulatory mechanisms.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. You may hand-deliver written comments and information to our office at the address given above.

3. You may send your comments and information by electronic mail (e-mail) directly to the Service at *fws8pelicanpetition@fws.gov*. Please avoid the use of special characters or any form of encryption in your e-mail. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Please also include "Attn: Brown Pelican" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766 or please submit your comments or information in writing using one of the alternate methods described above. In the event that our internet connection is not functional, please submit your comments or information by one of the alternate methods mentioned above. Please note that the e-mail address will be closed out at the termination of the information request period.

All comments and materials received for both the status review of the California brown pelican and the 5-year review of the brown pelican throughout its range will be available for public inspection, by appointment, during normal business hours at our Ventura Fish and Wildlife Office (see **ADDRESSES** above).

For the California Brown Pelican (Pelecanus Occidentalis Californicus) Petition To Delist

We are requesting information on the status of the California brown pelican throughout its range in both the United States and Mexico. Information/comments of particular interest include:

(1) Information on distribution, habitat selection, food habits, population density and trends, and habitat trends;

(2) Information on the distribution and abundance of prey species of California brown pelicans and any changes in the distribution and abundance of prey over time;

(3) Information on the effects of potential threats to California brown pelicans, including oil and gas development, contaminants, commercial and recreational fishing, disturbance, disease, and predation, in the United States and Mexico;

(4) Information on management programs for California brown pelican conservation in the United States and Mexico.

(5) Information or comments on the biological and administrative appropriateness of delisting California brown pelican (*Pelecanus occidentalis californicus*), although it is only a portion of the listed entity.

For the Brown Pelican (Pelecanus Occidentalis) Rangewide 5-Year Review

In addition to the information requested above, we are also requesting information for the 5-year review of the brown pelican throughout its entire range in North, Central, and South America and the Caribbean. We are requesting information on:

(1) Species biology, including but not limited to, population trends, distribution, abundance, demographics, and genetics;

(2) Habitat conditions, including but not limited to, amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends; and

(5) Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Author

The primary author of this document is Christine Hamilton, biologist, Ventura Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 15, 2006.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E6–7715 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 100
Wednesday, May 24, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 18, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV or fax* (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Rural Economic Development Loan and Grant Program.

OMB Control Number: 0570–0012.

Summary of Collection: Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940 (c) established a loan and grant program. The program provides zero interest loans and grants to electric and telecommunications utilities that have repaid or prepaid an insured, direct or guaranteed loan or any not-for-profit utility that is eligible to receive an insured or direct loan under the Rural Electrification Act (RUS Borrowers/ Intermediary) for the purpose of promoting rural economic development and job creation projects. The loans and grants under this program may be provided to approximately 1,700 electric and telecommunications utilities across the country that has borrowed funds from RUS. Under this program, the RUS borrowers/ Intermediary may receive the loan funds and pass them on to businesses or other organizations.

Need and Use of the Information: Rural Business-Cooperative Service (RBS) will collect information to evaluate applications for funding consideration, conduct an environmental review, prepare legal documents, receive loan payments, oversee the operation of a revolving loan fund, monitor the use of RBS funds, enforce other government requirements such as compliance with civil rights regulations. If the information were not collected, RBS would be unable to select the projects that will receive loan or grant funds.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 120.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 5,376.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–7870 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 19, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ 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.

Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.

OMB Control Number: 0581–0055.

Summary of Collection: The Plant Variety Protection Act (PVPA)

(December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of sexually-reproduced plants and make them available to the public, providing intellectual property rights (IPR) protection to those who breed, develop, or discover such novel varieties, and thereby promote progress in agriculture in the public interest. The PVPA is a voluntary user funded program that grants intellectual property ownership rights to breeders of new and novel seed- and tuber-reproduced plant varieties. To obtain these rights the applicant must provide information that shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable, as the law requires. Applicants are provided with applications to identify the information that is required to issue a certificate of protection.

Need and Use of the Information: The Agricultural Marketing Service will collect information from the applicant to be evaluated by examiners to determine if the variety is eligible for protection under the PVPA. If this information were not collected there will be no basis for issuing certificate of protection, and no way for applicants to request protection.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion; Other (varies).

Total Burden Hours: 1,671.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–7924 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet for a field trip on June 7, 2006 starting at 9 a.m. at the Sisters Ranger District, Pine Street and Hwy 20, Sisters, Oregon. Topics for discussion include Glaze Meadow Old Growth Restoration Project, the Sisters Area Fuels Reduction Project, Invasive Plants, B&B Fire Restoration Project, and Metolius Basin Vegetation Management Stewardship. A Public Forum will be available from 12:30 p.m. till 13 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Cecilia R. Seesholtz,

Deputy Forest Supervisor.

[FR Doc. 06–4806 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Cherokee National Forest, USDA Forest Service.

ACTION: Notice of new recreation fee site.

SUMMARY: Cherokee National Forest will begin charging a fee for overnight use at three campgrounds presently under construction at dispersed campsites 6, 7 and 8 in the Tellico River Corridor. Birch Branch Campground and Holder Cove Campground will be $10.00 per campsite per day. Rough Ridge Campground, which will accommodate small groups, will be $20.00 campsite per day. These developed campgrounds will facilitate overnight use along the Tellico River on the Tellico Ranger District of Cherokee National Forest. Fee revenue will support maintenance and operation of the campgrounds and future site improvements.

DATES: Construction of the three campgrounds is scheduled to be completed and the facilities opened to the public at different times in 2006. Overnight fees at all three sites will be initiated January 1, 2007.

ADDRESSES: Forest Supervisor, Cherokee National Forest, 2800 Ocoee Street N, Cleveland, TN 37312.

FOR FURTHER INFORMATION CONTACT: Doug Byerly, Recreation Fee Coordinator, 423–476–9748.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. Cherokee National Forest presently manages ten overnight recreation fee sites on the Tellico Ranger District. Recreation fees for overnight use range from $5.00 to $20.00 per campsite per day based on the level of development. Birch Branch, Holder Cove and Rough Ridge campgrounds will each offer a vault toilet facility, visitor information board, self-service fee collection site, bear resistant trash containers, developed campsites with a picnic table, fire ring and lantern post. Campsites will be available on a first come, first served basis.

Dated: May 17, 2006.

H. Thomas Speaks, Jr.,

Cherokee National Forest Supervisor.

[FR Doc. 06–4805 Filed 5–23–06 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Hurricane Disaster Assistance—Section 502 Guaranteed Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Rural Housing Service, an agency within the USDA Rural Development mission area, provides housing loan guarantees to rural residents through its Section 502 Guaranteed Loan Program. The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Act), Pub. L. 109–148 (12/30/05) provides USDA Rural Development with additional authorities and resources to address the damage caused by hurricanes that occurred during the 2005 calendar year. The intent of this NOFA is to introduce a temporary Mortgage Recovery Advance Program for existing Section 502 Guaranteed Loan Program borrowers impacted by certain 2005 hurricanes.

DATES: *Effective Date:* May 24, 2006 to April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Stuart Walden, Senior Loan Specialist, Section 502 Guaranteed Loan Program—STOP 0784 (Room 2250), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Ave. SW., Washington, DC 20250–0784.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0078.

Overview

Based upon the extensiveness and the magnitude of the damage to housing in the Gulf Coast Region, USDA Rural

Development's Section 502 Guaranteed Loan Program is making $500,000 available for assistance for Mortgage Recovery Advances. These funds will be made available on a first-come, first-served basis. Additional funding for this initiative is not expected. Funding for this initiative will be derived from funds made available through the Act.

A Notice of Funds Availability (NOFA) related to the Act (71 FR 12671–74, March 13, 2006) provided access to the following funding levels for USDA Rural Development single family housing programs in designated disaster areas:

- $1,293,103,000 in deliverable Section 502 guaranteed homeownership funds;
- $175,593,000 in deliverable Section 502 direct homeownership funds;
- $34,188,000 in deliverable Section 504 direct repair/rehabilitation loans; and
- $20,000,000 in deliverable Section 504 direct repair/rehabilitation grants.

Expanding the assistance made available under the Act to cover Mortgage Recovery Advances will reduce, slightly, the amount of funds made available for new Section 502 Guaranteed Loans provided for through the Act's provisions. It is anticipated that there will be ample funding for new loan Section 502 Guaranteed Loan activity.

USDA Rural Development intends to expand the single family housing program options made available by the Act and the March 13, 2006, NOFA through the availability of a Mortgage Recovery Advance program for existing Section 502 Guaranteed Loan Program borrowers (herein referred to as "borrowers") who are in default on their housing loans due to 2005 hurricane-related impacts. Mortgage Recovery Advances will reduce foreclosure rates and overall guaranteed loan losses for USDA Rural Development in affected areas. As a home retention and loss mitigation option, eligible delinquent borrowers may receive a one-time advance from their loan servicer in an amount equal to not more than 12 months past due mortgage payments, to include past due principal, interest, taxes, and insurance. Mortgage Recovery Advances are designed to assist borrowers who do not currently have the ability to support their normal monthly mortgage obligation due to a verifiable loss of income, increase in living expenses attributable to the hurricanes, and who have exhausted other home retention loss mitigation options. The advance would be applied directly to the eligible borrowers' delinquent mortgage installments in order to bring the loan into a current and performing status.

Only approved lenders, as prescribed in 7 CFR section 1980.308 may hold Section 502 Guaranteed loans. Loan servicers processing Mortgage Recovery Advances described in the Notice may not always be approved holding lenders. Approved holding lenders are responsible for the actions of any loan servicer they may employ for servicing section 502 guaranteed loans.

Upon application, loan servicers will be reimbursed by USDA Rural Development for eligible advances made under the Mortgage Recovery Advance program. The advance amount will be recorded as a junior lien on the property, and the borrower is required to repay Rural Development at the earlier of when the Section 502 Guaranteed Loan is paid off or when the borrower no longer owns the property. This debt will be evidenced by a promissory note and mortgage or deed of trust.

Designated Disaster Area

The designated disaster area shall be those Presidentially-declared areas eligible for individual assistance in the states of Alabama, Florida, Louisiana, Mississippi, and Texas in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

Description of Assistance

Under the Section 502 Guaranteed Loan Program's Mortgage Recovery Advance program, a loan servicer may, as provided in this NOFA, advance funds on behalf of a borrower in an amount necessary to reinstate a defaulted loan, and file a request to USDA Rural Development to be reimbursed for the amount of the advance.

All Mortgage Recovery Advances will require Agency approval prior to settlement. Each eligible advance that is executed by a loan servicer will entitle them to a one-time compensation payment of $500.00 from Rural Development to defray expenses associated with the action.

Borrower Qualifications

Borrowers must meet the following requirements to be eligible for a Mortgage Recovery Advance:

(1) The borrower's loan default must have resulted from one or more of the 2005 hurricanes, such as water or wind damage to the dwelling, increase in expenses, or loss of income as a result of the disaster.

(2) The borrower must have lived or worked in a designated disaster area at the time of the disaster.

(3) The borrower must have been current on their Section 502 Guaranteed Loan, including those accounts performing under a repayment plan or forbearance agreement, prior to the disaster.

(4) The borrower's account must be in arrears at least four but not more than twelve installments. The loan servicer's Mortgage Recovery Advance will include, in addition to the initial four delinquent installments, only the amount necessary to meet the borrower's arrearages, not to exceed the equivalent of 12 months of past due principal, interest, taxes, and hazard insurance. The lender or holder is requested to perform an escrow analysis prior to filing the claim to ensure that the partial claim payment made on behalf of the mortgagor represents, as accurately as possible, the escrow amounts required for taxes and insurance.

(5) The borrower must not be eligible for other home retention loss mitigation options, such a repayment plan, loan forbearance arrangement, or loan modification. Accounts that are fewer than four installments past due should be serviced using these traditional loss mitigation workout tools.

(6) The account must not have been referred for foreclosure.

(7) The borrower must not currently have the ability to support their normal monthly mortgage obligation due to the verifiable loss of income or increase in living expenses or costs from property damage to their principal residence attributable to the disaster.

(8) The borrower must continue occupying the property as a primary residence or intend to resume occupancy on a permanent basis when the residence becomes habitable. The impacted property must be habitable or capable of being repaired to be habitable.

(9) The borrower must have the demonstrated ability to resume making their regularly scheduled mortgage payment once the Mortgage Recovery Advance has been applied to their account.

Loan Servicer Requirements

General liquidation requirements for Section 502 Guaranteed Loans are found in 7 CFR section 1980.374. This provision requires that loan servicers submit a plan to USDA Rural Development when an account is 90 days or greater delinquent, and a method other than foreclosure will be used to resolve the delinquency.

Loan servicers must demonstrate that borrowers eligible for the Mortgage Recovery Advance program have homes that are in a habitable condition or will be repaired to a habitable condition, and that they can resume making their regularly scheduled mortgage loan payments after the Mortgage Recovery Advance is paid, using the following standards:

(a) Estimate the borrower's anticipated monthly net income for the same period, making necessary adjustments for income fluctuations.

(b) Estimate the borrower's normal monthly living expenses (food, utilities, etc.) including debt service on the mortgage and other scheduled and anticipated obligations.

(c) Subtract expenses from income to determine the amount of surplus income available each month.

Loan Servicers must receive prior approval from USDA Rural Development before they make a Mortgage Recovery Advance with a defaulted borrower.

Loan servicers will be required to have the borrowers execute a Mortgage Recovery Advance promissory note and mortgage or deed-of-trust perfecting a lien for USDA Rural Development for the amount of the Mortgage Recovery Advance. These RD forms are available by contacting the USDA Rural Development, Single Family Housing Guaranteed Loan Division, at (202) 690–4507, or by e-mail at: *SFHGLD@wdc.usda.gov*. Loan servicers will file the mortgage or deed of trust in the appropriate local real estate records.

Repayment Terms

(a) The Mortgage Recovery Advance note and subordinate mortgage or deed-of-trust must be recorded in favor of USDA Rural Development and will be interest free.

(b) No monthly or periodic payments are required; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(c) The note is due at the earlier of:

(1) The payoff of the first lien mortgage and the guaranteed note; or

(2) When the borrower transfers title to the property by voluntary or involuntary means.

(d) USDA Rural Development will collect this Federal debt from the borrower by any available means if the advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.

(e) Repayments of all or parts of Mortgage Recovery Advances must be collected and remitted to Rural Development by the loan servicer, or they may be remitted directly to USDA Rural Development by the borrower. To remit a payment via check, payable to USDA Rural Development, include the check and along with the borrower's name and taxpayer identification (ID) number to: USDA Rural Development, Cash Management Branch, FC–363, Attention: Mortgage Recovery Advance, P.O. Box 200011, St. Louis, Missouri 63120–0011.

To remit a payment electronically, contact USDA Rural Development's Cash Management Branch at (314) 457–4023 and ask for instructions for Remittance Express.

Filing a Claim for Reimbursement

A claim for reimbursement of the Mortgage Recovery Advance program must be submitted to the Agency within 60 days of the advance being executed by the borrower through their signature on the promissory note, but no later than April 30, 2007.

When filing the claim for reimbursement to USDA Rural Development, the loan servicer must:

(1) Submit a copy of the promissory note and filed mortgage or deed of trust;

(2) Include a summary of the amount of the funds advanced, including the monthly principal, interest, taxes, and insurance amount, and other account information indicating the borrower's arrearage before the advance as well as the present status of the account as of the date of the advance;

(3) Provide the name, address, and tax ID number for the loan servicer; and

(4) Provide the name, address, and phone number of a contact person for the loan servicer that can answer questions about the reimbursement request.

The Agency will pay the one-time $500 payment to the servicer with the reimbursement.

Subsequent Borrower Default

(1) Borrowers will be eligible for only one Mortgage Recovery Advance.

(2) If a borrower defaults on their loan after receiving a Mortgage Recovery Advance and a loss claim is filed by the loan servicer due to the default, any reimbursement issued for the Mortgage Recovery Advance to the servicer on behalf of the borrower will be credited toward the maximum loan guarantee amount payable by USDA Rural Development under the guarantee.

Emergency Declaration

Consistent with Proclamation 7925 issued by President Bush, the USDA Rural Development Mission Area has determined that it would be impracticable, unnecessary, and contrary to public interest to delay the effective date of this Notice for any reason.

Dated: May 18, 2006.

David J. Villano,

Acting Administrator, Rural Housing Service.

[FR Doc. E6–7901 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*,) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, *e.g.*, the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets. The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: public reporting burden for this collection of information is estimated to average 2.75 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 165.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–8435.

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.

Dated: May 17, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06–4818 Filed 5–23–06; 8:45 am]

BILLING CODE 3410–15–P

ANTITRUST MODERNIZATION COMMISSION

Public Meeting

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on June 7, 2006. The purpose of the meeting is for the Antitrust Modernization Commission to deliberate regarding its report and/or recommendations to Congress and the President.

DATES: June 7, 2006, 9:30 a.m. to approximately 5:30 p.m. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Conference Center, 601 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233–0701; e-mail: *info@amc.gov*. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Antitrust Modernization Commission to deliberate on its report and/or recommendations to Congress and the President regarding the antitrust laws. The meeting will cover civil remedies, the state action doctrine, and international enforcement issues. The Commission will also conduct other additional business, as necessary. Materials relating to the meeting will be made available on the Commission's Web site (*http://www.amc.gov*) in advance of the meeting.

The AMC has called this meeting pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. No. 107–273, 11054(f), 116 Stat. 1758, 1857; Federal Advisory Committee Act, 5 U.S.C. App., 10(a)(2); 41 CFR 102–3.150 (2005).

Dated: May 19, 2006.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission. Approved by Designated Federal Officer:

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. E6–7939 Filed 5–23–06; 8:45 am]

BILLING CODE 6820–YH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on the polyethylene retail carrier bags ("PRCBs") from the People's Republic of China ("PRC"), covering the period January 26, 2004, through July 31, 2005. Based on the withdrawal of requests for review with respect to certain companies, we are rescinding, in part, this administrative review.

EFFECTIVE DATE: May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650, Laurel LaCivita at (202) 482–4243 or Matthew Quigley at (202) 482–4551, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2005, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). We received timely requests for review from Crown Polyethylene Products (Int'l) Ltd. ("Crown"), Dongguan Nozawa Plastics and United Power Packaging (collectively "Nozawa"), High Den Enterprises Ltd ("High Den"), Rally Plastics Co., Ltd. ("Rally"), Sea Lake Polyethylene Enterprise Ltd. and Shanghai Glopack, Inc. ("Sea Lake/

Glopack"), and Shanghai New Ai Lian Import and Export Co., Ltd. ("Shanghai New Ai Lian"). Ampac Packaging (Nanjing) Co., ("Ampac"), requested a new shipper review or, alternatively, an administrative review. On September 30, 2005, the Department denied Ampac a new shipper review.

On September 28, 2005, the Department published a notice of the initiation of the antidumping duty administrative review of PRCBs from the PRC for the period January 26, 2004, through July 31, 2005. *See Notice Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 25, 2005, the Department initiated an administrative review for Ampac. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005).

On November 16, 2005, Shanghai 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/Glopack withdrew their requests for an administrative review. On February 23, 2006, Ampac withdrew its request for a review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Rally, Shanghai New Ai Lian, and Sea Lake/Glopack all withdrew their requests within the 90-day limit. Therefore, the Department will rescind the review as to these companies. Ampac withdrew its request after the 90-day deadline. However, consistent with the Department's practice, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted considerable time and resources to this review. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42032 (July 21, 2005); *See also, Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44560 (August 3, 2005); and *Notice of Rescission of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 70 FR 33733 (June 9, 2005). Further, we find that Ampac's withdrawal does not constitute an abuse of our procedures. Therefore, we are partially rescinding this review of the antidumping duty order on polyethylene retail carrier bags from the PRC covering the period January 26, 2004, through July 31, 2005. The Department will issue appropriate assessment instructions for Sea Lake/Glopack, Shanghai New Ai Lian, Rally and Ampac directly to U.S. Customs and Border Protection within 15 days of publication of this rescission.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 17, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–7965 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Notice of Intent To Partially Rescind Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India for the period February 1, 2005, through January 31, 2006. The Department intends to rescind this review with respect to Viraj Alloys, Ltd., Viraj Forgings, Ltd., Viraj Impoexpo, Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd., after concluding that there were no entries of merchandise subject to the order during the period of review.

DATES: *Effective Date:* May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Holland, 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) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce (the "Department") published in the **Federal Register** the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 2005). On February 1, 2006, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from India for the period of review ("POR") February 1, 2005, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 4, 2006, we received a timely request for administrative review from Isibars Limited ("Isibars"). On February 28, 2006, timely review requests were received from Facor Steels Limited ("Facor"); Mukand Limited ("Mukand"); and Carpenter Technology Corporation, Electralloy Company, Crucible Specialty Metals, North American Stainless, Universal Stainless, and Valbruna Slater Stainless, Inc. (collectively, the "petitioners"). The petitioners requested an administrative review of the following companies because, according to the request, the petitioners believed these firms were manufacturing and/or exporting the subject merchandise to the United States: the "Viraj Group, including but necessarily limited to Viraj Alloys, Ltd., Viraj Forgings, Ltd., Viraj Impoexpo, Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd."; Akai Asian; Atlas

Stainless ("Atlas"); Bhansali Bright Bars Pvt. Ltd. ("Bhansali"); Grand Foundry, Ltd. ("Grand Foundry"); Meltroll Engineering Pvt. Ltd. ("Meltroll"); Sindia Steels Limited ("Sindia"); Snowdrop Trading Pvt. Ltd. ("Snowdrop"); and Venus Wire Industries Pvt. Ltd. ("Venus").

On April 5, 2006, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated an administrative review of the antidumping duty order on SSB from India with respect to Akai Asian, Atlas, Bhansali, Facor, Grand Foundry, Isibars, Meltroll, Mukand, Sindia, Snowdrop, Venus, and conditionally initiated an administrative review with respect to Viraj Alloys, Ltd. ("VAL"), Viraj Impoexpo, Ltd. ("VIL"), Viraj Forgings, Ltd. ("VFL"), Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd., (collectively, the "Viraj entities").[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006) ("*Initiation Notice*"). In the *Initiation Notice*, the Department stated that, although the Department revoked the order in part with respect to entries of the merchandise subject to the order produced and exported by Viraj (Viraj Alloys, Ltd., Viraj Impoexpo, Ltd., Viraj Forgings, Ltd.), the Department was conditionally initiating a review with respect to Viraj Alloys, Ltd., Viraj Impoexpo, Ltd., Viraj Forgings, Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd., pending further information from the requestor as to sales of subject merchandise not covered by the revocation.[2]

Scope of the Order

Merchandise covered by the order is shipments of SSB. SSB means 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. SSB includes cold-finished SSBs 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-to-length flat-rolled products (*i.e.*, cut-to-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), 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, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this proceeding. *See* Memorandum to Barbara E. Tillman, Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling (May 23, 2005).

Post-Initiation Developments

On April 6, 2006, the Department requested that, in light of the previous revocation determination, the petitioners clarify the specific producers or exporters for which they were seeking review and, for each company, whether they were requesting a review as to merchandise produced by that company, or only merchandise exported by that company. Moreover, the Department indicated that absent adequate clarification, it intended to rescind the administrative review with respect to the Viraj Group. *See* April 6, 2006, letter from Julie H. Santoboni, Program Manager, to the petitioners.

On April 7, 2006, the petitioners responded to the Department's request for further information stating that they were seeking a review of any of the listed companies (*i.e.*, the Viraj Group) in their capacity as either a producer or exporter (or both, with the exception of VAL, VIL, and VFL) of merchandise subject to the order during the POR. Furthermore, the petitioners urged the Department to seek information as to whether the named companies shipped merchandise subject to the order to the United States during the POR. The petitioners also referred to the changes in operation among the various Viraj entities that the Department recognized in pre-revocation reviews.

Therefore, in light of the revocation and the petitioners' request, we determined that it was appropriate to ascertain whether there were suspended entries of merchandise subject to the order during the POR from the Viraj entities. We examined shipment data obtained from U.S. Customs and Border Protection ("CBP") and placed these data on the record on May 9, 2006. *See* Memorandum to the File, "U.S. Customs and Border Protection Data," dated May 9, 2006. Based on this information, we determined that there are no suspended entries of merchandise subject to the order involving any of the Viraj entities for the POR. *See* Memorandum from Susan Kuhbach, Office Director to Stephen J. Claeys, Deputy Assistant Secretary, "2005–2006 Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India—Rescission of Review of the Viraj Group Companies," dated May 18, 2006.

In April 2006, the Department issued a request for information from all of the respondents in this review concerning the quantity and value of the merchandise subject to the order shipped to the United States during the POR. On May 1, 2006, the Viraj entities submitted the requested quantity and value information to the Department.

Intent to Partially Rescind the Administrative Review

Section 751(a) of the Act instructs the Department that, when conducting administrative reviews, it is to determine the dumping margin for entries during the period. Further, according to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if it concludes that, during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. The Department has interpreted the statutory and regulatory language as requiring "that there be entries during the period of review upon

[1] For this **Federal Register** notice, we use the terms "Viraj," "the Viraj Group" and "the Viraj entities" interchangeably. Moreover, this notice pertains only to the Department's intent to rescind the current administrative review with respect to the Viraj entities. Therefore, this notice will not discuss developments in the administrative review with respect to Akai Asian, Atlas, Bhansali, Facor, Grand Foundry, Isibars, Meltroll, Mukand, Sindia, Snowdrop, and Venus.

[2] The Department revoked the order in part, with respect to entries of merchandise subject to the order produced and exported by "Viraj," a collapsed entity. Viraj included Viraj Alloys, Ltd.; Viraj Impoexpo, Ltd.; and Viraj Forgings, Ltd. The revocation was effective February 1, 2003. *See Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 69 FR 55409, 55410–11 (September 14, 2004).

which to assess antidumping duties." *See Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088, 44088 (August 1, 2005). In *Allegheny Ludlum Corp.* v. *United States*, 346 F.3d 1368 (Fed. Cir. 2003), the Court of Appeals for the Federal Circuit upheld the Department's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR. *See also Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067, 63068 (November 7, 2003) (stating that "the Department's interpretation of its statute and regulations, as affirmed by the Court of Appeals for the Federal Circuit, supports not conducting an administrative review when the evidence on the record indicates that respondents had no entries of subject merchandise during the POR").

Because there were no entries of merchandise subject to the order during the POR from any of the Viraj companies named in the notice of initiation, we intend to rescind the administrative review with respect to Viraj. Thus, the statute, the regulations, previous administrative decisions, and case law all support rescission of the administrative review in this case. Therefore, the Department intends to rescind the administrative review with respect to the Viraj entities.

Public Comment

Interested parties may comment on the Department's notice of intent to rescind the administrative review with respect to the Viraj entities not later than 15 days after the date of publication of this notice in the **Federal Register**. Rebuttal comments, must be filed not later than 10 days after the time limit for filing the initial comments. Comments will be considered in the Department's preliminary results, which are currently due October 31, 2006.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–7970 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 060428114–6114–01]

Request for Technical Input—Standards in Trade Workshops

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Request for workshop recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to submit recommendations for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. system of standards development, conformity assessment, and metrology may facilitate trade. Prospective workshops will be scheduled for a one week period. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. NIST will offer a limited number of workshops, based upon the availability of resources. Recommenders are encouraged to consider departmental priorities outlined in the 2005 National Export Strategy. NIST will consider recommendations based upon which workshops would be most useful to intended audiences.

DATES: All recommendations must be submitted no later than 5 p.m., June 23, 2006.

ADDRESSES: All recommendations must be submitted to Ellen Emard via e-mail (*ellen.emard@nist.gov*) or by mail to 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899. The National Export Strategy is available at *http://www.ita.doc.gov/media/publications/*. Additional information about the NIST Standards in Trade Workshops, including schedules and summary reports for workshops held to date and participant information, is available at *http://ts.nist.gov/ts/htdocs/210/gsig/sitdescr.htm*.

FOR FURTHER INFORMATION CONTACT: Ellen Emard (301) 975–4038, *ellen.emard@nist.gov* or Teresa Cronise (301) 975–4023, *teresa.cronise@nist.gov*.

SUPPLEMENTARY INFORMATION: The Standards in Trade Workshops are a major activity of the Global Standards and Information Group in the NIST Standards Services Division (SSD). The workshops are designed to provide timely information to foreign standards officials on U.S. practices in standards and conformity assessment. Participants are introduced to U.S. technology and principles in metrology, standards development and application, and conformity assessment systems and procedures.

Each workshop is a one week program offering an overview of the roles of the U.S. Government, private sector, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with U.S. technology and practices in metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. Government and the private sector in developing and implementing standards; (3) understand the structure of the standards and conformity assessment systems in the invited country or countries and the role and responsibilities of organizations represented by the invitees; and (4) develop professional contacts as a basis for strengthening technical ties and enhancing trade.

Workshop recommendations (maximum 5 pages) must address at a minimum the following points, *in the order noted and labeled accordingly:*

1. Name and Description of the Recommending Person or Organization

Provide the primary mailing address and a brief description of the organization, including the name, telephone number and e-mail address of the primary point of contact.

2. Industry Sector and Suggested Workshop Title

Provide a description of the suggested industrial sector and focus area with a possible workshop title which captures the essence of the recommendation. Consider the goals and potential benefits.

3. Proposed Workshop Objectives

Describe the intended goals to be attained and why they are important and list the specific possible workshop objectives.

4. Calendar Dates Suggested for Workshop

Provide three or more suggested start dates for the workshop. The first date should be no earlier than 8 months from the publication date of this announcement.

5. Relevant NIST Organizational Link

Workshop topics must be linked to NIST activities and/or research. The appropriate NIST organizational unit, laboratory or program must be identified by the recommender and the relevance of the activity to NIST must be

demonstrated. If known, identify the specific NIST staff who could serve as the NIST internal point of contact.

6. Proposed Foreign Participants

Provide a representative list of the foreign organizations that might participate in the workshop, including a description of their function or business and their country of incorporation or origin.

7. U.S. Stakeholder Participants (e.g., Associations, Agencies, Users, Others)

Provide a representative list of other U.S.-based organizations that are likely to participate in the workshop.

8. Principal Topics

Provide a list of the suggested topics for the workshop.

9. Related Site Visits and Events

Workshops can include visits to relevant business sites or events. Provide a list of suggested site visit locations, events or other areas of interest and discuss the relevance of each to the overall purpose of the proposed workshop's goals.

10. Expected Outcomes/Measures of Success

Include in this section a description of:

a. The anticipated benefit of the workshop for trade and market access;

b. The anticipated economic impacts (in dollars);

c. The potential for future opportunities for collaboration and for trade as a result of the workshop:

d. The measures of success;

e. The desired results of the workshop and how the results will be measured.

All recommendations must address each of the above ten points.

Dated: May 17, 2006.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. E6–7937 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, June 13, from 8:45 a.m. to 5 p.m. and Wednesday, June 14, from 9 a.m. to 11 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include updates on NIST's activities, safety, strategic planning, and the NIST U.S. Measurement System project; a presentation on the vision for the Center for Nanoscale Science and Technology; a presentation on the NIST reconnaissance of Hurricane Katrina and Hurricane Rita; a VCAT Panel on How to Maximize NIST Impact on U.S. Innovation; and selected laboratory tours. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*.

DATES: The meeting will convene on June 13 at 8:45 a.m. and will adjourn on June 14, 2006, at 11 a.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, June 8 and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

FOR FURTHER INFORMATION CONTACT: Carolyn Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

Dated: May 18, 2006.

William Jeffrey,

Director.

[FR Doc. E6–7953 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051106A]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft revised Recovery Plan (Plan) for the western and eastern distinct population segments (DPS) of Steller sea lion (*Eumetopias jubatus*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on July 24, 2006.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by: (1) E-mail: *SSLRP@noaa.gov*. include in the subject line the following document identifier: Sea Lion Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes; (2) Mail: P.O. Box 21668, Juneau, AK 99802; (3) hand delivery to the Federal Building : 709 W. 9th Street, Juneau, AK; or (4) Fax: (907) 586 7012. Interested persons may obtain the Plan for review from the above address or on-line from the NMFS Alaska Region website: *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Shane Capron, (907 271 6620), e-mail shane.capron@noaa.gov; or Kaja Brix, (907 586 7235), e-mail *kaja.brix@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) Objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or

endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species. NMFS' goal is to restore endangered and threatened Steller sea lion (*Eumetopias jubatus*) populations to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Recovery Plan.

The Steller sea lion was listed as a threatened species under the ESA on April 5, 1990 (55 FR 12645), due to substantial declines in the western portion of the range. In contrast, the eastern portion of the range (in southeastern Alaska and Canada) was increasing at 3 percent per year. Critical habitat was designated on August 27, 1993 (58 FR 45269), based on the location of terrestrial rookery and haulout sites, spatial extent of foraging trips, and availability of prey items. In 1997, the Steller sea lion population was split into a western distinct population segment (DPS) and an eastern DPS based on demographic and genetic dissimilarities (62 FR 30772). Due to the persistent decline, the western DPS was reclassified as endangered, while the increasing eastern DPS remained classified as threatened. Through the 1990s the western DPS continued to decline. However, the western population has shown as increase of approximately 3 percent per year between 2000 and 2004. This was the first recorded increase in the population since the 1970s. Based on recent counts, the western DPS is currently about 44,800 animals and may be increasing due to higher juvenile and adult survival. However, it remains unclear whether Steller sea lion reproduction has also improved and whether the observed 3 percent annual population growth will continue. The eastern DPS is currently between 45,000 and 51,000 animals, and has been increasing at 3 percent per year for 30 years.

The first recovery plan was completed in December 1992 and covered the entire range of the threatened species. However, the recovery plan became obsolete after the split into two DPSs in 1997. Nearly all of the recovery actions contained in the plan had also been completed. NMFS assembled a new recovery team in 2001 to revise the first plan. The recovery team completed the draft revision in March 2006 and forwarded the plan to NMFS with unanimous endorsement by the 17 team members who represented the fishing industry, Alaska Natives, fishery and marine mammal scientists, and environmental organizations.

The Plan contains: (1) A comprehensive review of Steller sea lion ecology, (2) a review of previous conservation actions, (3) a threats assessment, (4) biological and recovery criteria for downlisting and delisting, (4) actions necessary for the recovery of the species (78 discrete actions for the western DPS), and (5) estimates of time and cost to recovery.

The threats assessment concludes that the following threats are relatively minor: (1) Alaska Native subsistence harvest, (2) illegal shooting, (3) entanglement in marine debris, (4) disease, and (5) disturbance from vessel traffic and scientific research. Although much has been learned about Steller sea lions and the North Pacific ecosystem, considerable uncertainty remains about the magnitude and likelihood of the following potential threats (relative impacts in parenthesis): competition with fisheries (potentially high), environmental variability (potentially high), killer whale predation (potentially high), incidental take by fisheries (medium), and toxic substances (medium).

In contrast, no threats were identified for the eastern DPS. Although several factors affecting the western DPS also affect the eastern DPS (e.g., environmental variability, killer whale predation, toxic substances, disturbance), these threats do not appear to be limiting recovery given the long term sustained growth of the population. However, concerns exist regarding global climate change and the potential for the southern part of the range (i.e., California) to be adversely affected. Future monitoring should target this southern portion of the range.

The Plan identifies 78 substantive actions needed to achieve recovery of the western DPS by addressing the broad range of threats. The Plan highlights three actions (detailed below) that are especially important to the recovery program for the western DPS:

1. *Maintain current fishery conservation measures:* After a long term decline, the western DPS appears to be stabilizing. The first slowing of the decline began in the 1990s suggesting that the management measures implemented in the early 1990s may have been effective in reducing anthropogenic effects (e.g., shooting, harassment, and incidental take). The apparent population stability observed in the last 6 years is correlated with comprehensive fishery management measures implemented since the late 1990s. The current suite of management actions (or their equivalent protection) should be maintained until substantive evidence demonstrates that these measures can be reduced without limiting recovery.

2. *Design and implement an adaptive management program to evaluate fishery conservation measures:* Due to the uncertainty in how fisheries affect Steller sea lions and their habitat, and the difficulty in extrapolating from individual scientific experiments, a properly designed adaptive management program should be implemented. This type of program has the potential to assess the relative impact of commercial fisheries and to better distinguish the impacts of other threats (including killer whale predation). This program will require a robust experimental design with replication at the proper temporal and spatial scales with the appropriate levels of commercial fishing as experimental treatments. It will be a challenge to construct an adaptive management plan that meets the requirements of the ESA, is statistically sufficient, and can be implemented by the commercial fisheries. Acknowledging these hurdles, a significant effort must be made to determine the feasibility of such a program.

3. *Continue population monitoring and research on the key threats potentially impeding sea lion recovery:* Estimates of population abundance, trend, distribution, health, and essential habitat characteristics are fundamental to Steller sea lion management and recovery. Further, current information on the primary threats is insufficient to assess their impact on recovery. Focused research is needed on how these threats impact sea lion population growth and how they may be mitigated in order to facilitate recovery. In addition to studies on individual threats, the dynamics between threats needs to be better understood to assess the cumulative effects on sea lions.

Criteria for reclassification of Steller sea lion are included in the Plan. In summary, the western DPS of Steller sea lion may be reclassified from endangered to threatened when all of the following have been met: (1) Counts of non-pups in the U.S. portion of the DPS have increased for 15 years (on average); (2) the population ecology and vital rates in the U.S. region are consistent with the observed trend; (3) the non-pup trends in at least 5 of the 7 sub-regions are consistent with the

overall U.S. trend, and the population trend in any two adjacent sub-regions can not be declining significantly; and (4) all five listing factors are addressed.

The western DPS of Steller sea lion may be delisted when all of the following conditions have been met: (1) Counts of non-pups in the U.S. portion of the DPS have increased at an average annual rate of 3 percent for 30 years (i.e., 3 generations); (2) the population ecology and vital rates in the U.S. region are consistent with the observed trend; (3) the non-pup trends in at least 5 of the 7 sub-regions are consistent with the overall U.S. trend; the population trend in any two adjacent sub-regions can not be declining significantly, and the population trend in any single sub-region can not have declined by more than 50 percent; and (4) all five listing factors are addressed.

The eastern DPS of Steller sea lion may be delisted when all of the following have been met: (1) The population has increased at an average rate of 3 percent per year for 30 years (i.e., 3 generations); (2) the population ecology and vital rates are consistent with the observed trend; and (4) all five listing factors are addressed.

Time and cost for recovery actions are contained in the Plan. The recovery program for the western DPS will cost $93,840,000 for the first 5 fiscal years and $430,425,000 to full recovery assuming 30 years for recovery starting in 2000, and using year 5 costs as the cost for all future years. The recovery program for the eastern DPS will cost $150,000 for the first year and $1,050,000 total for 10 years of post-delisting monitoring.

In accordance with the 1994 peer review policy, NMFS solicited peer review on the draft Plan. Reviews were requested from 5 scientists and managers with expertise in recovery planning, statistical analyses, fisheries, and marine mammals. The reviews of the Plan were generally favorable. In particular, the reviewers found the recovery criteria to be well reasoned and supported. In response to reviewer's comments, changes were made to the plan to clarify the recovery criteria, add delisting criteria for the western DPS, and focus priorities and actions. NMFS anticipates that many of the recommendations made by the reviewers will be addressed in an implementation and research plan which NMFS intends to develop after the Plan is finalized. Reviewers' comments and NMFS' formal response to the comments will be provided in detail in the final recovery plan.

Public Comments Solicited

NMFS solicits written comments on the draft Revised Recovery Plan. All substantive comments received by the date specified above will be considered prior to final approval of the Plan. NMFS seeks comments particularly in the following areas: (1) The threats assessment; (2) the biological and threats criteria for removing the Steller sea lion from the Federal list of Endangered and Threatened Wildlife and Plants; (3) the recovery strategy and measures; and (4) estimates of time and cost to implement recovery actions.

Authority

The authority for this action is section 4(f) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 18, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7969 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060404095–6132–02]

Northern Gulf of Mexico Cooperative Institute

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) published a notice in the **Federal Register** on April 10, 2006 announcing availability of funds to establish a Northern Gulf of Mexico (NGOM) Cooperative Institute (CI). That notice contained an error in the description of how proposals on cost-sharing would be evaluated. This notice corrects the error.

FOR FURTHER INFORMATION CONTACT: Dr. John Cortinas, 1315 East West Highway, Room 11554, Silver Spring, Md. 20910 telephone 301–713–9397 x 206. Facsimile: (301) 713–0158; e-mail: *John.Cortinas@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 10, 2006, in FR Volume 71, Number 68, on page 18084, the second sentence in the section on cost sharing requirements is incorrect. The sentence, "There is no minimum cost sharing requirement, however, the amount of cost sharing will be considered in determining the level of CI commitment under NOAA's standard evaluation of project costs" is corrected to read, "There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI's commitment under NOAA's standard evaluation criterion for overall qualifications of applicants."

All other requirements and information listed in the original notice remains the same.

Classification

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 **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

Funding for years 2–5 of the Cooperative Institute is contingent upon the availability of appropriated funds. In no event will NOAA or the Department of Commerce be responsible for application 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.

Paperwork Reduction Act

This notification involves collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) respectively under control numbers 0348–0043, 0348–0044, 0348–0040, and 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

It has been determined that this notice is 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, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 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 none has been prepared.

Dated: May 17, 2006.

Mark E. Brown,

Chief Financial Officer, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. E6–7968 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051806B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 11–16, 2006. The Council meeting will begin on Tuesday, June 13, at 8 a.m., reconvening each day through Friday, June 16. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Tuesday, June 13 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: (650) 570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters
1. Future Council Meeting Agenda Planning
2. Approval of Council Meeting Minutes
3. Legislative Matters
4. Fiscal Matters
5. Appointments to Advisory Bodies, Standing Committees, and Other Forum, Including any Necessary Changes to Council Operating Procedures
6. Council Three-Meeting Outlook, Draft September 2006 Council Meeting Agenda, and Workload Priorities

C. Coastal Pelagic Species Management
1. Pacific Mackerel Harvest Guideline for 2006–07 Season
2. NMFS Report

D. Habitat
1. Current Habitat Issues

E. Highly Migratory Species Management
1. Changes to Routine Management Measures for 2007–08 Season
2. Exempted Fishing Permits for 2007–08 Season
3. Albacore Management

F. Groundfish Management
1. NMFS Report
2. Tentative Adoption of 2007–08 Groundfish Fishery Specifications/ Management Measures and Amendment 16–4
3. Trawl Individual Quota Analysis - Review of Stage I Document
4. Consideration of Inseason Adjustments
5. Council Clarification of Tentative Adoption of 2007–08 Groundfish Fishery Specifications/Management Measures and Amendment 16–4 (if necessary)
6. Final Adoption of 2007–08 Groundfish Fishery Specifications/ Management Measures and Amendment 16–4

G. Salmon Management
1. Fishery Regulation Assessment Model
2. Fishery Management Plan Amendment 15 (de minimis fisheries)
3. Application of Genetic Stock Identification in Ocean Salmon Fisheries

Schedule of Ancillary Meetings

SUNDAY, June 11, 2006

Groundfish Management Team — 1 p.m.
Trawl Individual Quota Committee — 1 p.m.

MONDAY, June 12, 2006

Council Secretariat — 8 a.m.
Groundfish Advisory Subpanel — 8 a.m.
Groundfish Management Team — 8 a.m.
Highly Migratory Species Advisory Subpanel — 8 a.m.
Scientific and Statistical Committee — 8 a.m.
Habitat Committee — 9 a.m.
Budget Committee — 10:30 a.m.
Legislative Committee — 1 p.m.
Enforcement Consultants — 4:30 p.m.
Chair's Reception — 6 p.m.

TUESDAY, June 13, 2006

Council Secretariat — 7 a.m.
California State Delegation — 7 a.m.
Oregon State Delegation — 7 a.m.
Washington State Delegation — 7 a.m.
Groundfish Advisory Subpanel — 8 a.m.
Groundfish Management Team — 8 a.m.
Highly Migratory Species Advisory Subpanel — 8 a.m.
Scientific and Statistical Committee — 8 a.m.
Enforcement Consultants — As necessary

WEDNESDAY, June 14, 2006

Council Secretariat — 7 a.m.
California State Delegation — 7 a.m.
Oregon State Delegation — 7 a.m.
Washington State Delegation — 7 a.m.
Groundfish Advisory Subpanel — 8 a.m.
Groundfish Management Team — 8 a.m.
Salmon Amendment Committee — 8 a.m.
Enforcement Consultants — As necessary

THURSDAY, June 15, 2006

Council Secretariat — 7 a.m.
California State Delegation — 7 a.m.
Oregon State Delegation — 7 a.m.
Washington State Delegation — 7 a.m.
Groundfish Advisory Subpanel — 8 a.m.
Groundfish Management Team — 8 a.m.
Salmon Advisory Subpanel — 8 a.m.
Salmon Technical Team — 8 a.m.
Enforcement Consultants — As necessary

FRIDAY, June 16, 2006

Council Secretariat — 7 a.m.
California State Delegation — 7 a.m.
Oregon State Delegation — 7 a.m.
Washington State Delegation — 7 a.m.
Enforcement Consultants — As necessary
Groundfish Advisory Subpanel — As necessary
Groundfish Management Team — As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those

issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 18, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National marine Fisheries Service.

[FR Doc. E6–7875 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051806D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat and Ecosystem-based Management Committees, Snapper Grouper Committee, a joint meeting of its King and Spanish Mackerel Committee and Advisory Panel, King and Spanish Mackerel Committee, Scientific and Statistical Selection Committee (CLOSED SESSION), Joint Executive/ Finance Committees, Southeast Data, Assessment and Review (SEDAR) Committee and a meeting of the full Council. In addition, the Council will hold a public input session.

DATES: The meetings will be held on June 12–16, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Wyndham Grand Bay Hotel, 2669 South Bayshore Drive, Coconut Grove, FL 33133; telephone: (1–800) 996–3426 or (305) 858–9600, fax: (305) 859–2026.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407- 4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Joint Habitat and Ecosystem-Based Management Committees Meeting: June 12, 2006, 1:30 p.m. - 5:30 p.m. and June 13, 2006, from 8:30 a.m. - 12 noon.

The Habitat and Ecosystem-Based Management Committees will receive results and recommendations from a joint meeting of the Habitat and Coral Advisory Panels, receive a report regarding the status of the Fishery Ecosystem Plan (FEP) development, and an overview of items for consideration in the FEP Comprehensive Amendment. The Committees will develop recommendations for the FEP and the FEP Comprehensive Amendment.

2. Snapper Grouper Committee Meeting: June 13, 2006, 1:30 p.m. - 4:30 p.m. and June 14, 2006, 8:30 a.m. - 12 noon

The Snapper Grouper Committee will receive an overview of Amendment 14 to the Snapper Grouper Fishery Management Plan (FMP) and recommendations from the Scientific and Statistical Committee (SSC). Amendment 14 addresses the use of marine protected areas for deepwater snapper grouper species. The Committee will discuss highly migratory species considerations associated with the amendment and then develop recommendations to the Council for Amendment 14.

The Committee will also receive an overview and SSC recommendations for Amendment 15 to the Snapper Grouper FMP. Amendment 15 addresses rebuilding schedules for snowy grouper, golden tilefish, black sea bass, and red porgy; recreational sale; permit issues (incorporation and 60-day renewal), size limits for queen triggerfish, and fishing year changes for golden tilefish. After discussing the biological opinion for the snapper grouper fishery, the Committee will make recommendations to the Council regarding Amendment 15.

The Committee will receive additional presentations from the SSC regarding cooperative research and data collection, a red porgy SEDAR update, data collection recommendations for species like snowy grouper; and presentations from NMFS on landings, the status of Amendment 13C addressing overfishing, and quota monitoring. The Committee will develop recommendations for the Council following the SSC and NMFS presentations.

June 13, 2006, 4:30 p.m. - The Council will hold a Public Input Session. Members of the public are invited to address the Council on items listed on the agenda or any other fishery issue that falls under the jurisdiction of the Council.

3. Joint Mackerel Committee and Advisory Panel (AP) Meeting: June 14, 2006, 1:30 p.m. - 5:30 p.m.

The Mackerel Committee and AP will receive a report from the SSC on king mackerel stock identification and an overview from Council staff of framework actions that will meet management requirements. The AP will provide input and recommendations to the Committee.

4. Mackerel Committee Meeting: June 15, 2006, 8:30 a.m. until 10:30 a.m.

The Mackerel Committee will meet to develop recommendations on items for framework action or to include in the FEP Comprehensive Amendment.

5. Joint Executive Finance Committee Meeting: June 15, 2006, 10:30 a.m. until 12 noon

The Committees will receive an update on Calendar Year 2006 budget, activities schedule, FMP timelines, and the status of the President's Fiscal Year 2007 budget. The Committees will then review and approve the Regional Operations Agreement for the Council/ NMFS Southeast Regional Office teams responsible for drafting management documents.

6. SEDAR Committee Meeting: June 15, 2006, 1:30 p.m. - 2:30 p.m.

The SEDAR Committee will receive an SSC briefing on the Research and Monitoring Report and receive a report on SEDAR Steering Committee meeting. The Committee will provide input on future species to be assessed through the SEDAR process and provide recommendations for the Council.

7. SSC Selection Committee Meeting: June 15, 2006, 2:30 p.m. - 3:30 p.m. (Closed Session)

The SSC Selection Committee will meet to review applications and develop recommendations for the Council on the appointment of members to the SSC.

8. Council Session: June 15, 2006, 4 p.m. - 6 p.m. and June 16, 2006, 8:30 a.m. - 12 noon

From 4 p.m. - 4:15 p.m., the Council will call the meeting to order, adopt the

agenda, and approve the February/March 2006 meeting minutes.

From 4:15 p.m. - 4:30 p.m., the Council will receive a report on the SSC meetings.

From 4:30 p.m. - 5 p.m., the Council will receive a joint Habitat and Ecosystem-based Management Committees report and take action as appropriate.

From 5 p.m. - 5:30 p.m., the Council will hear a report from the Snapper Grouper Committee and take action as appropriate.

From 5:30 p.m. - 5:45 p.m., the Council will take final action on the Georgia Aquarium's Experimental Fishing Permit.

From 5:45 p.m. - 6 p.m., the Council will hear a report from the SSC Selection Committee and take action as appropriate.

Council Session: June 16, 2006, 8:30 a.m. - 12 noon.

From 8:30 a.m. - 9 a.m., the Council will receive a report from the Mackerel Committee and take action as appropriate.

From 9 a.m. - 9:15 a.m., the Council will receive a report from the Joint Executive/Finance Committees and take action as appropriate.

From 9:15 a.m. - 9:30 a.m., the Council will receive a report from the SEDAR Committee and take action as appropriate.

From 9:30 a.m. - 9:45 a.m., the Council will receive an update on spiny lobster management.

From 9:45 a.m. - 12 noon, the Council will receive a report on the Council Chairmen's/NMFS meetings and receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 8, 2006.

Dated: May 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7876 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051706E]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 133rd meeting to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 133rd Council meeting and public hearings will be held on June 12 - 15, 2006. For specific times and the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 133rd Council meeting and public hearings will be held at the Utulei Convention Center, Utulei, American Samoa; telephone: (684) 633–5155.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Monday, June 12, 2006

Standing Committee

1. *8 a.m. - 9:30 a.m.*–Enforcement/Vessel Monitoring System Standing Committee
2. *9:30 a.m. - 11:30 a.m.*–Pelagics &International Standing Commmittee
3. *12:30 p.m. - 2 p.m.*–Bottomfish Standing Committee
4. *2 p.m. - 4 p.m.*–Ecosystems & Habitat Standing Committee
5. *4 p.m. - 6 p.m.*–Program Planning, Executive, and Budget Standing Committee

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

8:30 a.m. - 5 p.m., Tuesday, June 13, 2006

1. Samoan Opening
2. Greetings from the Governor
3. Presentation to American Samoa Poster Winners
4. Introductions
5. Approval of Agenda
6. Approval of 131st and 132nd Meeting Minutes
7. Island Agency Administration, Program and Enforcement Reports
   A. American Samoa
   B. Guam
   C. Hawaii
   D. Commonwealth of the Northern Marianas Islands
8. Agency Reports
   A. National Marine Fisheries Service
   1. Pacific Islands Fisheries Science Center
   2. Pacific Islands Regional Office
   B. United States Fish and Wildlife Service (USFWS)
   C. NOAA General Counsel Report
   D. Department of State
   E. NOAA Sanctuary Program Update
   1. Fagatele Bay National Marine Sanctuary
   2. Proposed American Samoa Marine Laboratory
9. American Samoa Advisory Panel Report
10. Enforcement/vessel monitoring systems
   A. United States Coast Guard Report
   B. National Marine Fisheries Service Office for Law Enforcement Report
   C. Status of Violations
   D. Standing Committee Recommendations
   Guest Speaker
11. Fishery Rights of Indigenous People
   A. American Samoa Village-based Marine Protected Areas Program

B. Ahupuaa Conference Planning
C. Update on Marine Conservation Plans
D. Status of Community Demonstration Project Program and Community Development Program

8:30 a.m. - 5 p.m., Wednesday, June 14, 2006

12. Pelagic and International Fishery Issues
A. Local Small-Boat Fisheries
1. Commercial Fisheries
2. Recreational Fisheries
B. Small Boat Longline Area Closure
C. Bigeye and Yellowfin Overfishing Measures (ACTION ITEM)
D. Options for Swordfish Seasonal Closure (ACTION ITEM)
E. American Samoa Tuna Cannery Issues
F. American Samoa Longline Limited Entry Update
G. American Samoa & Hawaii Longline Reports
H. Bycatch
1. Shark Bycatch in Longline Fisheries
2. Side-setting to Avoid Seabirds
I. International Fisheries
1. International Scientific Committee
2. Secretariat of the Pacific Community Heads of Fisheries Meeting
3. Inter-American Tropical Tuna Commission Annual Meeting
4. Western and Central Pacific Fishery Commission Scientific Committee Meeting
5. Council South Pacific Albacore Workshop
J. Recreational Fisheries Data Task Force Report
K. Plan Team Recommendations
L. Scientific and Statistical Committee Recommendations
M. Standing Committee Recommendations
N. Public Hearing
13. Protected Species Issues
A. Local Protected Species Programs
B. Native Observer Program Report
C. Scientific and Statistical Committee Recommendations

8:30 a.m. - 5 p.m., Thursday, June 15, 2006

14. Bottomfish and Seamount Groundfish Issues
A. American Samoa Bottomfish Fishery Review
B. Report on Hawaii Monitoring and Research Plan
C. Update on Bottomfish Stock Assessment
D. Plan Team Recommendations
E. Scientific and Statistical Committee Recommendations
F. Standing Committee Recommendations
15. Ecosystems and Habitat Issues
A. American Samoa Coral Reef Fisheries Report
B. American Samoa Coral Reef Conservation Grants
C. American Samoa Rapid Assessment Monitoring Program
D. Northwestern Hawaiian Islands Fishery Regulations (ACTION ITEM)
E. Update on Fishery Ecosystem Plans and Projects
F. Plan Team Recommendations
G. Scientific and Statistical Committee Recommendations
H. Standing Committee Recommendations
I. Public Hearing
16. Program Planning
A. Update on Legislation and Magnuson-Stevens Fishery Conservation and Management Act Reauthorization
B. Update on Fishery Management Actions
C. Education and Outreach Report
D. Update on Disaster Relief
1. 2003 Guam and Commonwealth of the Northern Marianas Islands Disaster Relief Requests
2. Update on Hawaii Disaster Relief Program
E. Standing Committee Recommendations
17. Administrative Matters and Budget
A. Financial Reports
B. Administrative Reports
C. Meetings and Workshops
D. Council Family Changes
E. Standing Committee Recommendations
18. Other Business
A. Next Meeting

BACKGROUND INFORMATION:

1. Bigeye and Yellowfin Tuna Overfishing Measures(ACTION ITEM)

In response to the identification of overfishing by the Secretary of Commerce, at its 126th meeting held March 14–17, 2005 in Honolulu the Council reviewed a background document on Pacific bigeye fisheries, listened to public comments and took initial action to direct its staff to continue its development of Amendment 14 to the Pelagics Fishery Management Plan (FMP). This amendment contains comprehensive background information and analyses as well as recommendations for international management and a range of alternatives for the management of domestic fisheries. Following extensive review by the Council's Pelagics Plan Team, Science and Statistical Committee and Advisory Panels, as well as public comment solicited at meetings through out Hawaii, the Council took final action in June 2005 to recommend a suite of non-regulatory measures for the international management of fisheries which harvest bigeye tuna. The Council also reviewed and recommended a range of regulatory and non-regulatory measures for fisheries managed under the Pelagics FMP.

Subsequently, in August 2005, the Scientific Committee of the Western and Central Pacific Fishery Commission reviewed stock assessments for tuna species and found that yellowfin was likely being subjected to overfishing. Consequently, at its 129th Council meeting, the Council recommended applying to fishing for yellowfin tuna the same management measures recommended by the Council for bigeye tuna. Reviews received from NMFS Pacific Islands Regional Office and the NOAA Office of General Counsel on these actions have now indicated that the Council must address the following three outstanding issues:

1. The amendment objectives need to be quantified where possible.

2. The recommendations need to be grouped as alternatives.

3. A recommendation regarding the management of purse seine vessel targeting of bigeye tuna in the Eastern Pacific Ocean needs to be included.

The Council will consider and take action on these issues at its 133rd meeting.

2. Options for Swordfish Seasonal Closure (ACTION ITEM)

Management of the swordfish segment of the Hawaii-based longline fishery is based on limiting interactions with loggerhead and leatherback sea turtles, and on limits to the number of sets that the fishery may make in a given year. The fishery operates under 'hard' limits on the number of loggerhead (17) and leatherback (16) interactions.

In 2006, the Hawaii-based swordfish fishery reached its 'hard' limit of 17 loggerhead turtle interactions compared to 12 interactions in 2005. There were only 2 leatherback interactions in 2006 compared to 8 interactions in 2005. Oceanographic data suggests that in 2006 the ocean habitat used by loggerheads was reduced, increasing loggerhead densities and the likelihood of interactions with the fishery.

Current regulations provide for a seven day period to shut down the swordfish fishery following reaching of a turtle limit. However, there is a danger that continued fishing might catch additional turtles in this seven day closure period.

The swordfish fishery was closed by emergency rule in 2006. Because this

emergency rule is effective for 180 days (and may be extended for another 180 days), it is unlikely to be in effect for the 2007 fishing season. The Council will therefore consider changes to the Pelagics FMP that would allow immediate closure of the fishery when either of the turtle limits are reached.

Subsequently, the Pelagics Plan Team recommended in its May 2006 meeting that the Council also consider methods to smooth the adverse markets effect of these closures. These include consideration of an interim trigger level of turtle takes by the Hawaii swordfish longline fishery that might be used to establish a short term (1–4 week) temporary closures, to prevent the fishery reaching its limits prematurely. The Council may, therefore, take action at this meeting to amend the Pelagics Fishery Management Plan to modify the current swordfish longline fishery closure mechanism. The Council will also consider these measures at its 133rd meeting.

3. NWHI Fishing Regulations (ACTION ITEM)

On January 18, 2006, the Council was informed by the Under Secretary of Commerce for Oceans and Atmosphere, that NOAA is developing alternatives in the Draft Environmental Impact Statement for the proposed Northwestern Hawaiian Islands (NWHI) National Marine Sanctuary that would enable the Council to continue to recommend management measures to limit bottomfish and pelagic fisheries through regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), consistent with the goals and objectives of the proposed sanctuary.

In response to this notice, the Council, relying on guidance provided by NOAA, took initial action at its 131st meeting held March 13–16, 2006 and recommended that limited commercial bottomfish and non-longline pelagic fishing be allowed to continue in Federal waters of the proposed NWHI National Marine under the following permit and catch limits:

1. Limited-entry NWHI bottomfish permits be capped at 14, with 7 permits for the Ho'omalu Zone and 7 permits for the Mau Zone (the two Community Development Program permits for indigenous use to be included in the latter and issued as previously recommended by the Council);

2. The annual bottomfish catch be limited to 381,500 lbs (85% of MSY);

3. Non-longline commercial pelagic fishing permits be capped at three (3); and

4. The annual commercial pelagic catch by the non-longline pelagic fishery and the limited-entry bottomfish fishery be limited to 180,000 lbs.

Subsequently, seven outstanding issues related to these action were identified which require further Council consideration. These issues are: (1) The design of a limited entry program for non-longline pelagic fishing; (2) the designation of a fishing year(s) to be used for the monitoring of the fishing catch limits (3) appropriate compensation for displaced or negatively impacted individuals; (4) the importance and role of the NOAA weather buoy ι1 to sanctuary resources as well as to pelagic fishing; (5) the accuracy of the data used by NOAA to calculate the annual pelagic catch limit of 180,000 pounds;(6) whether all fishing for a given species group should be prohibited following closure of a commercial fishery; and (7) the role of the Council in the formulation of NOAA's future NWHI ecosystem management plans. The Council may therefore, consider actions to address these outstanding issues at its 133rd meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7877 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060516133–6133–01]

The Preliminary Report of the NOAA Science Advisory Board, Hurricane Intensity Research Working Group, External Review of NOAA's Hurricane Intensity Research and Development Enterprise

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA Research (OAR) publishes this notice on behalf of the NOAA Science Advisory Board (SAB) to announce the availability of the preliminary report of the SAB Hurricane Intensity Research Working Group (here called the HIRWG) external review of NOAA's Hurricane Intensity Research and Development Enterprise for public comment. The preliminary report of the HIRWG has been prepared pursuant to the request from the Under Secretary of Commerce for Oceans and Atmosphere to the SAB to conduct an external review of NOAA's Hurricane Intensity research and development enterprise.

DATES: Comments on this preliminary report must be submitted by 5 p.m. EDT on June 23, 2006.

ADDRESSES: The Preliminary Report of the HIRWG will be available on the NOAA Science Advisory Board Web site at *http://www.sab.noaa.gov/reports/SAB_HIRWG_0506.pdf.*

The public is encouraged to submit comments electronically to *noaa.sab.comments2@noaa.gov*. For individuals who do not have access to a computer, comments may be submitted in writing to: NOAA Science Advisory Board (SAB) c/o Dr. Cynthia Decker, Silver Spring Metro Center Bldg 3 Room 11117, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11117, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Cynthia.Decker@noaa.gov*) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: The preliminary report of the HIRWG has been drafted pursuant to the request from the Under Secretary of Commerce for Oceans and Atmosphere to the SAB to conduct an external review of NOAA's hurricane intensity research and development enterprise. This review addresses questions and draft recommendations regarding the appropriateness of the mix of scientific activities conducted and/or sponsored by NOAA to its mission and on the organization of NOAA hurricane intensity research and development enterprise. The report recommends that NOAA strengthen its efforts to develop numerical models which incorporate essential physics and have sufficient

resolution to resolve hurricane structure. The essential physics includes full representation of clouds and a much improved representation of the exchanges of heat, moisture, and momentum at the atmosphere-ocean surface. Development of these representations will require extensive analysis of data from carefully planned field studies using both traditional airborne and ground-based observing systems and novel observing platforms such as Unmanned Aerial Vehicles.

The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary on long- and short-term strategies for research, education, and application of science to resource management and environmental assessment and prediction.

NOAA welcomes all comments on the content of the preliminary report. We also request comments on any inconsistencies perceived within the report, and possible omissions of important topics or issues. This preliminary report is being issued for comment only and is not intended for interim use. For any shortcoming noted within the preliminary report, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final report will be posted on the SAB Web site.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of comments and assure that all comments are appropriately considered. Please provide background information about yourself on the first page of your comments: Your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, e-mail address(es).

Overview comments on the section should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page numbers to which they apply. Please number all pages and place your name at the top of each page.

Dated: May 18, 2006.

Mark E. Brown,

Chief Financial Officer / Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–7966 Filed 5–23–06; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on June 15, 2006 from 0900 to 1830 and June 16, 2006 from 0830 to 1430.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1) (1982), and that accordingly this meeting will be closed to the public.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4808 Filed 5–23–06; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC06–585–001, FERC 585]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 18, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 24, 2006 (71 FR 9529–9530) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by June 26, 2006.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, an 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 should refer to Docket No. IC06–587–001.

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. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 585 "Reporting of Electric Energy Shortages and Contingency Plans under PURPA".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0138.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Public Law 95–617, 92 Stat. 3117. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission by rule, was to require each public utility to (1) report to the Commission and appropriate state regulatory authorities of any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and (2) report to the Commission and any appropriate state regulatory authority in a contingency plan that would outline what circumstances might give rise for such occurrences.

In FERC Order No. 575 (60 FR 4859, January 25, 1995) the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that if a public utility includes in its rates schedule a provision that: (a) During electric energy and capacity shortages it will treat firm power wholesale customers without undue discrimination or preference; and (b) it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of the contingency plan for accommodating such shortages. This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In FERC Order No. 659, (70 FR 35027–28, June 16, 2006) the Commission revised its regulations to provide an alternative means for public utilities to report shortages of electric energy and capacity by submitting an electronic filing via the Commission's Division of Reliability's pager system at *emergency@ferc.gov* instead of filing with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate appropriate an option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) Examine, approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filings requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.

5. *Respondent Description:* The respondent universe currently comprises 7 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 511 total hours, 7 respondents (average), 1 response per respondent, and 73 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 511 hours/2080 hours per years × $112,767 per year = $ 27,704. The cost per respondent is equal to $3,958.

Statutory Authority: Statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Pub. L. 95–617, 92 Stat. 3117.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7959 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–409–006, CP01–410–005, CP01–411–008, and CP01–444–005]

Calypso U.S. Pipeline, LLC; Notice of Filing

May 16, 2006.

Take notice that on May 9, 2006, Calypso U.S. Pipeline, LLC (Calypso) filed an application pursuant to sections 3 and 7 of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations for modifications of the Order Issuing Certificates, section 3 Authorization, and Presidential Permit issued to Calypso on March 24, 2004. The primary modifications would alter an aspect of the construction methodology to be used for the pipeline and enlarge the diameter of the pipeline. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

The changes for which approval is sought in the application include: (i) Authority to modify near shore horizontal directional drilling construction to constructing a tunnel of approximately 10-foot diameter from a landward point located in Port Everglade, Florida to appoint approximately 3.20 miles seaward on the sub-sea floor where the depth is about 126 feet, (ii) authority to expand the diameter of the pipeline from its originally certificated 24 inches to 30 inches; (iii) authority to defer the in-service date to June 30, 2010; (iv) approval of various conforming changes to the rates set forth in Calypso's pro forma tariff; and (v) modification of certain conditions to construction set forth in the Commission's original certificate order. The proposed changes will not affect the certificated capacity of 832,000 MMBtu/day.

Any questions regarding the application may be directed to Timothy Fisk, Vice President and Operations Officer, Calypso U.S. Pipeline, LLC, 1990 Post Oak Boulevard, Suite 1900, Houston, Texas 77056. Telephone number is 713–636–1626.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask

for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7892 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–168–000]

CenterPoint Energy Gas Transmission Company; Notice of Request under Blanket Authorization

May 16, 2006.

Take notice that on May 1, 2006, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP06–168–000 a request pursuant to sections 157.205 and 157.208(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to; abandon in place, replace and extend an existing supply lateral; construct a new compressor station; and increase the maximum allowable operating pressure (MAOP) of the line, located in Bienville and Webster Parishes, Louisiana, under the authorization issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Lawrence O. Thomas, Director of Rates and Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, at (318) 429–2804.

CEGT proposes to construct approximately 17.5 miles of 12-inch pipeline to replace and extend Line FT–2 and to increase its MAOP from 450 psig to 1000 psig. CEGT indicates that the replacement and extension would require new and additional right-of-way. CEGT also proposes to abandon in place the existing 14-inch mechanically-coupled pipe.

CEGT, in addition, proposes to construct the Sibley Compressor Station that would consist of two (2) 1550 hp Waukesha L7044GSI compressor units and appurtenant facilities. CEGT states that all of the proposed construction activities would occur in Bienville and Webster Parishes, Louisiana.

CEGT contends that the proposed construction, abandonment, and increase in MAOP would have no adverse affect on any existing customers or service. It is said that the total estimated construction cost would be approximately $18.1 million, which would be financed with available funds and/or short-term borrowings.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7881 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–319–001]

Distrigas of Massachusetts LLC; Notice of Tariff Filing

May 18, 2006.

Take notice that on May 11, 2006, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-First Revised Sheet No. 94 to become effective as of June 1, 2006.

DOMAC filed a replacement Twenty-First Revised Sheet No. 94 to correct two errors in the revised Index of Customers filed on April 28, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7956 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–4160–009; ER99–1567–005; ER99–2157–006; ER00–1049–006; ER00–1895–006; ER01–140–005; ER01–141–005; ER01–943–005; ER01–1044–006; ER01–3109–006; ER02–506–006; ER02–553–005; ER03–42–010; and ER02–2202–009]

Dynegy Power Marketing, Inc.; Rockingham Power, L.L.C.; Rocky Road Power, LLC; Calcasieu Power, LLC; Dynegy Midwest Generation, Inc.; Dynegy Danskammer, L.L.C.; Dynegy Roseton, L.L.C.; Heard County Power, L.L.C.; Riverside Generating Company, L.L.C.; Renaissance Power, L.L.C.; Bluegrass Generation Company, L.L.C.; Rolling Hills Generating, L.L.C.; Sithe/Independence Power Partners, L.P.; Sithe Energy Marketing, L.P.; Notice of Filing

May 16, 2006.

Take notice that on April 6, 2006, Dynegy Inc., on behalf of certain public utility subsidiaries, filed a joint notification of change in status with respect to Dynegy's recent acquisition of a percentage in Rocky Road Power, LLC's indirect ownership interest.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 May 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7885 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–757–000; ER06–757–001]

Eastman Cogeneration, L.P.; Notice of Issuance of Order

May 17, 2006.

Eastman Cogeneration, L.P. (Eastman) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Eastman also requested waiver of various Commission regulations. In particular, Eastman requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Eastman.

On May 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request 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 approval of issuances of securities or assumptions of liability by Eastman 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 June 12, 2006.

Absent a request to be heard in opposition by the deadline above, Eastman 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 Eastman, 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 approval of Eastman's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7895 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–275–000]

Equitrans, L.P.; Notice of Application

May 18, 2006.

Take notice that on May 10, 2006, Equitrans, L.P. (Equitrans); 225 North Shore Drive, Pittsburgh, PA 15212, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) of the Commission's regulations, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of interstate natural gas pipeline facilities necessary to provide up to130, 000 Dekatherms per day (Dth/d) of firm transportation service. This 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll

free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Equitrans proposes to construct and operate 69.9 miles of new 20-inch diameter pipeline and related facilities (the Big Sandy Pipeline Project) that will provide a direct connection between the Big Sandy Compression Station in Langley, Kentucky, and a proposed new interconnection with Tennessee Gas Pipeline Company's Broad Run Lateral in Carter County, Kentucky. Equitrans also proposes to install three (3) 3,000 horsepower (hp) electrically-driven compressor units at the outlet of the existing Kentucky Hydrocarbon Compressor Station in Langley. In addition, Equitrans proposes to install a meter station and launcher, pressure regulation facilities and a receiver at the terminus of the pipeline. Equitrans estimates that the proposed facilities will cost $150,371,210.

Any questions about this application should be directed to David K. Dewey, Vice President & General Counsel, Equitrans, L.P., 225 North Shore Drive, Pittsburgh, PA 15212, at 412–395–2566 or fax 412–395–3311.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all filings to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, other persons do not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF06–12–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: June 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7957 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG06–36–000]

ExTex LaPorte Limited Partnership; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 16, 2006.

Take notice that on March 31, 2006, ExTex LaPorte Limited Partnership (ExTex LaPorte) tendered for filing additional information and analysis in support of its application filed on February 7, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 May 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7883 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–745–000; ER06–745–001]

MASSPOWER; Notice of Issuance of Order

May 17, 2006.

MASSPOWER filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary

services at market-based rates. MASSPOWER also requested waiver of various Commission regulations. In particular, MASSPOWER requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MASSPOWER.

On May 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request 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 approval of issuances of securities or assumptions of liability by MASSPOWER 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 June 12, 2006.

Absent a request to be heard in opposition by the deadline above, MASSPOWER 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 MASSPOWER, 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 approval of MASSPOWER's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7894 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–276–000]

Mississippi Hub, LLC; Notice of Petition

May 16, 2006.

Take notice that on May 11, 2006 Mississippi Hub, LLC (MS Hub), 2707 N. Kensington St. Arlington, VA 22207, filed a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a test well and performing other activities to assess the feasibility of developing an underground natural gas storage facility in Simpson County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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 at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to J. Gordon Pennington, Attorney at Law, Mississippi Hub, LLC ("MS Hub"), 2707 N. Kensington St. Arlington, VA 22207, Phone: 03–533–7638 or e-mail *Pennington5@verizon.net*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: May 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7882 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003; RT01–86–000, RT01–86–001 and RT01–86–002; RT01–95–000, RT01–95–001 and RT01–95–002; RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003; RT01–98–000; and RT02–3–000]

Regional Transmission Organizations; Bangor Hydro-Electric Company, et al.; New York Independent System Operator, Inc., et al.; PJM Interconnection, L.L.C., et al.; PJM Interconnection, L.L.C.; ISO New England, Inc., New York Independent System Operator, Inc.; Notice of Filing

May 16, 2006.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file 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 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 6, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7880 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–784–000]

Rumford Falls Hydro LLC; Notice of Issuance of Order

May 17, 2006.

Rumford Falls Hydro LLC (Rumford LLC) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Rumford LLC also requested waiver of various Commission regulations. In particular, Rumford LLC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Rumford LLC.

On May 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request 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 approval of issuances of securities or assumptions of liability by Rumford LLC 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 June 12, 2006.

Absent a request to be heard in opposition by the deadline above, Rumford LLC 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 Rumford LLC, 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 approval of Rumford LLC's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7897 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–759–000]

Selkirk Cogen Partners, L.P.; Notice of Issuance of Order

May 17, 2006.

Selkirk Cogen Partners, L.P. (Selkirk Cogen) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Selkirk Cogen also requested waiver of various Commission regulations. In particular, Selkirk Cogen requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Selkirk Cogen.

On May 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request 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 approval of issuances of securities or assumptions of liability by Selkirk Cogen 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 June 12, 2006.

Absent a request to be heard in opposition by the deadline above, Selkirk Cogen 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 Selkirk Cogen, 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 approval of Selkirk Cogen's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7896 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–011]

Southern Natural Gas Company; Notice of Refund Report

May 16, 2006.

Take notice that on May 1, 2006, Southern Natural Gas Company (Southern) tendered for filing a refund report in compliance with the Commission's letter order dated April 20, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed 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 May 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7890 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–217–002]

Trans-Union Interstate Pipeline, L.P.; Notice of Refund Report

May 16, 2006.

Take notice that on May 8, 2006, Trans-Union Interstate Pipeline, L.P. (Trans-Union), submitted its Refund Report in compliance with the Federal Energy Regulatory Commission's March 9, 2006 Letter Order issued in Docket No. RP06–217–000.

Trans-Union further states that it has served copies of its filing on all affected customers and all interested state regulatory commissions.

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 May 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7891 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–107–010]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 16, 2006.

Take notice that on May 5, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Commission, under protest, certain revised tariff sheets to Original Volume No. 2 and Second Revised Volume No. 1 of its FERC Gas Tariff, a non-conforming Rate Schedule FT–1 Service Agreement between Williston Basin and Northern States Power Company (NSP), and an amended Exhibit A to Contract No. FT–00157 between Williston Basin and NSP in compliance with the Commission's Order issued April 20, 2006 in Docket No. RP00–107–009.

Williston Basin states that its filing reflects the removal of the Rate Schedule X–13 agreement between Williston Basin and NSP from its Tariff, and that it is filing the provisions of Rate Schedule X–13 as a non-conforming Rate Schedule FT–1 Service Agreement with terms identical to those of the predecessor Rate Schedule X–13 except for the removal of the 25 basis point reduction in the return on equity component. The effective date of such Service Agreement is May 5, 2006 in compliance with the Commission's Order. Williston Basin is also filing an amended Exhibit A to Contract No. FT–00157 between Williston Basin and NSP to reflect the removal of the 50-percent ADQ limitation.

Williston Basin also states that this filing is being made without prejudice to Williston Basin's rights on rehearing and/or judicial review of any of the various issues in the instant proceeding and matters currently pending. Williston Basin reserves its rights relative to any refunds and/or rebilling that may result from the final outcome of the instant 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7889 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–72–000]

PPL EnergyPlus, LLC, Complainant v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

May 16, 2006.

Take notice that on May 15, 2006, pursuant to section 206 of the Federal Power Act and rule 206(h) of the Rules of Practice and Procedures of the Commission, PPL EnergyPlus, LLC (Complainant) filed a formal complaint against New York Independent System Operator, Inc. (NYISO) alleging that NYISO failed to conduct its External Rights Auction in a just and reasonable manner. The Complainant requests that the Commission direct a stakeholder process to revise the NYISO's process of awarding External Rights. The Complainant also requests fast track processing of its complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7884 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–360–000]

ProGas USA Inc., Complainant v. Iroquois Gas Transmission System L.P., Respondent; Notice of Complaint Requesting Fast Track Processing

May 17, 2006.

Take notice that on May 16, 2006, ProGas USA Inc. (Complainant), filed a complaint, pursuant to section 203 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, against Iroquois Gas Transmission System L.P. (Iroquois) alleging Iroquois unlawfully conducted two open seasons for the same capacity and unlawfully invalidated all of the valid bids in response to the first open season. The Complainant also requests fast track processing of this Complaint.

The Complainant states that a copy of the complaint has been served on Iroquois.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7893 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–77–000, *et al.*]

FPL Group, Inc. *et al.*; Electric Rate and Corporate Filings

May 16, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Group, Inc.; Constellation Energy Group, Inc.

[Docket No. EC06–77–000]

Take notice that on May 4, 2006, FPL Group, Inc. and Constellation Energy Group, Inc., pursuant to Rule 213(a)(2), filed their answer to the various Motions to Intervene, Protests and Requests for Hearing filed in the above-referenced proceeding.

Comment Date: 5 p.m. Eastern Time on May 25, 2006.

2. American Electric Power Service Corporation

[Docket No. EC06–117–000]

Take notice that on May 10, 2006, American Electric Power Service Corporation on behalf of AEP Texas North Company (TNC) and Southwestern Electric Power Company (SWEPCO) filed an application for authorization to transfer jurisdictional facilities from TNC to SWEPCO, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on May 31, 2006.

3. ExTex LaPorte Limited Partnership

[Docket No. EG06–36–000]

Take notice that on March 31, 2006, ExTex LaPorte Limited Partnership (ExTex LaPorte) tendered for filing additional information and analysis in support of its application filed on February 7, 2006.

Comment Date: 5 p.m. Eastern Time on May 24, 2006.

4. Dominion Energy Kewaunee, Inc.

[Docket No. EG06–50–000]

Take notice that on May 8, 2006, Dominion Energy Kewaunee, Inc. filed a notice of self-recertification of exempt wholesale generator status, pursuant to the Public Utility Holding Company Act of 2005 and section 366.7 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

5. Dynegy Power Marketing, Inc.; Rockingham Power, L.L.C.; Rocky Road Power, LLC; Calcasieu Power, LLC; Dynegy Midwest Generation, Inc.; Dynegy Danskammer, L.L.C.; Dynegy Roseton, L.L.C.; Heard County Power, L.L.C.; Riverside Generating Company, L.L.C.; Renaissance Power, L.L.C.; Bluegrass Generation Company, L.L.C.; Rolling Hills Generating, L.L.C.; Sithe/Independence Power Partners, L.P.; Sithe Energy Marketing, L.P.

[Docket Nos. ER99–4160–009; ER99–1567–005; ER99–2157–006; ER00–1049–006; ER00–1895–006; ER01–140–005; ER01–141–005; ER01–943–005; ER01–1044–006; ER01–3109–006; ER02–506–006; ER02–553–005; ER03–42–010; ER02–2202–009]

Take notice that on April 6, 2006, Dynegy Inc., on behalf of certain public utility subsidiaries; filed a joint notification of change in status with respect to Dynegy's recent acquisition of a percentage in Rocky Road Power, LLC's indirect ownership interest.

Comment Date: 5 p.m. Eastern Time on May 26, 2006.

6. A.O.G. Corporation

[Docket No. PH06–50–000]

Take notice that on May 8, 2006, A.O.G. Corporation filed a notice of petition for exemption from the requirements of the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b)(2)(vi) and 366.4(b)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

7. American States Water Company

[Docket No. PH06–51–000]

Take notice that on May 8, 2006, American States Water Company filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

8. Consolidated Edison, Inc.

[Docket No. PH06–52–000]

Take notice that on May 8, 2006, Consolidated Edison, Inc. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.21, 366.22 and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

9. CH Energy Group, Inc.

[Docket No. PH06–53–000]

Take notice that on May 8, 2006, CH Energy Group, Inc. filed a notice of petition for waiver of the Commission's requirements of the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

10. Energy East Enterprises, Inc.; Berkshire Energy Resources; Connecticut Energy Corporation

[Docket No. PH06–54–000]

Take notice that on May 9, 2006, Energy East Enterprises, Inc., Berkshire Energy Resources, and Connecticut Energy Corporation filed a notice of petition for exemption from the requirements of the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b)(vi) and 366.4(b)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

11. RGS Energy Group, Inc.; CMP Group, Inc.; Central Maine Power Company; NORVARCO; CTG Resources, Inc.; TEN Companies, Inc.

[Docket No. PH06–55–000]

Take notice that on May 9, 2006, RGS Energy Group, Inc., CMP Group, Inc., Central Maine Power Company, NORVARCO, CTG Resources, Inc., and TEN Companies, Inc. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

12. Energen Corporation

[Docket No. PH06–56–000]

Take notice that on May 8, 2006, Energen Corporation filed a notice of petition for exemption from the requirements of the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b)(2) and 366.4(b)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

13. UGI Corporation

[Docket No. PH06–57–000]

Take notice that on May 8, 2006, UGI Corporation filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

14. Puget Energy, Inc.

[Docket No. PH06–58–000]

Take notice that on May 10, 2006, Puget Energy, Inc. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 31, 2006.

15. HH–SU Investments L.L.C.

[Docket No. PH06–59–000]

Take notice that on May 8, 2006, HH-SU Investments L.L.C. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

16. Cap Rock Energy Corporation

[Docket No. PH06–60–000]

Take notice that on May 8, 2006, Cap Rock Energy Corporation filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

17. Peoples Energy Corporation

[Docket No. PH06–61–000]

Take notice that on May 9, 2006, Peoples Energy Corporation filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c) and 366.4(c)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

18. Peoples Energy Corporation

[Docket No. PH06–62–000]

Take notice that on May 9, 2006, Peoples Energy Corporation filed a notice of petition for exemption of the Commission's requirements of the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b) and 366.4(b)(1) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

19. Duquesne Light Holdings, Inc.

[Docket No. PH06–63–000]

Take notice that on May 8, 2006, Duquesne Light Holdings, Inc. filed a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c) of the Commission's Regulations.

Comment Date: 5 p.m. Eastern Time on May 30, 2006.

Standard Paragraph

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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7878 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 16, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER06–823–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its First Revised Sheet 4, Rate Schedule 233 with the City of Robinson, Kansas.

Filed Date: May 8, 2006.

Accession Number: 20060515–0076.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–834–001.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Michigan Electric Transmission Co, LLC submits a revised cover page requested by FERC staff to allow cancellation to become effective March 7, 2005.

Filed Date: May 4, 2006.

Accession Number: 20060515–0008.

Comment Date: 5 p.m. Eastern Time on Thursday, May 25, 2006.

Docket Numbers: ER06–838–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp submits corrected sheets, Sub First Revised Sheet Nos. 0, 25, and 36, Third Revised Volume No. 6, to its April 6, 2006 filing.

Filed Date: May 5, 2006.

Accession Number: 20060515–0007.

Comment Date: 5 p.m. Eastern Time on Friday, May 26, 2006.

Docket Numbers: ER06–903–001.

Applicants: Alcoa Power Generating Inc.

Description: Alcoa Power Generating Inc submits a correction to its April 24, 2006 filing, First Revised FERC Electric Rate Schedule No. 12.

Filed Date: May 8, 2006.

Accession Number: 20060515–0009.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–958–000.
Applicants: North American Energy, LLC.
Description: North American Energy LLC submits a notice of cancellation for its FERC Electric Rate Schedule, Original Volume No. 1.
Filed Date: May 9, 2006.
Accession Number: 20060511–0258.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–959–000.
Applicants: Vermont Electric Cooperative, Inc.
Description: Vermont Electric Cooperative Inc informs FERC that it is an electric cooperative affected by the amendment to section 201(f) of the Federal Power Act, and withdraws certain rate schedules and tariffs.
Filed Date: May 4, 2006.
Accession Number: 20060515–0011.
Comment Date: 5 p.m. Eastern Time on Thursday, May 25, 2006.

Docket Numbers: ER06–960–000.
Applicants: People's Electric Cooperation.
Description: People's Electric Cooperation informs FERC that it is an electric cooperative affected by the amendment to section 201(f) of the Federal Power Act, and as a result withdraws its First Revised Rate Schedule No. 1.
Filed Date: May 5, 2006.
Accession Number: 20060515–0012.
Comment Date: 5 p.m. Eastern Time on Friday, May 26, 2006.

Docket Numbers: ER06–961–000.
Applicants: People's Electric Cooperative.
Description: People's Electric Cooperative informs FERC that it is an electric cooperative affected by the amendment to section 201(f) of the Federal Power Act and, to the extent necessary, cancels its jurisdictional rate schedule.
Filed Date: May 5, 2006.
Accession Number: 20060515–0013.
Comment Date: 5 p.m. Eastern Time on Friday, May 26, 2006.

Docket Numbers: ER06–962–000.
Applicants: Vermont Electric Cooperative, Inc.
Description: Vermont Electric Cooperative, Inc submits its 2006 transmission formula rate update to -local service.
Filed Date: May 5, 2006.
Accession Number: 20060515–0014.
Comment Date: 5 p.m. Eastern Time on Friday, May 26, 2006.

Docket Numbers: ER06–963–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Co requests FERC's approval of a proposed accounting treatment of certain RTO formation costs.
Filed Date: May 5, 2006.
Accession Number: 20060515–0010.
Comment Date: 5 p.m. Eastern Time on Friday, May 26, 2006.

Docket Numbers: ER06–966–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co submits its proposed Large Generator Interconnection Agreement with Pomeroy Wind Farm, LLC, Original Service Agreement No. 278.
Filed Date: May 9, 2006.
Accession Number: 20060515–0017.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–967–000.
Applicants: The Cincinnati Gas & Electric Company.
Description: The Cincinnati Gas & Electric Co d/b/a Duke Energy Ohio, Inc. submits a notice of succession, effective April 10, 2006 in reference to tariff for reactive supply service to MISO, and rate schedule for Wabash Valley Power Association.
Filed Date: May 8, 2006.
Accession Number: 20060515–0005.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–968–000.
Applicants: The Cincinnati Gas & Electric Company.
Description: The Cincinnati Gas & Electric Co d/b/a Duke Energy Ohio, Inc submits a notice of succession, effective April 10, 2006, in reference to tariff for reactive supply service to PJM Interconnection, LLC, and rate schedule for emergency redispatch service to ComEd.
Filed Date: May 8, 2006.
Accession Number: 20060515–0001.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–969–000.
Applicants: BP West Coast Products LLC.
Description: BP West Coast Products, LLC submits proposed revisions to its market-based rate tariff designated as FERC Electric Tariff Second Revised Volume 1.
Filed Date: May 8, 2006.
Accession Number: 20060515–0077.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–970–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp submits an amendment to Part IV of the OATT, FERC Electric Tariff, Third Revised Volume 6.
Filed Date: May 8, 2006.
Accession Number: 20060515–0081.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–971–000.
Applicants: Exelon Business Services Company; Exelon Edgar LLC.
Description: Exelon Business Services Co on behalf of its affiliate Exelon Edgar LLC submits a notice of cancellation of market-based rate wholesale power sales tariff, Seventh Revised Volume No. 1.
Filed Date: May 8, 2006.
Accession Number: 20060515–0016.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–972–000.
Applicants: Thornwood Management Company, LLC.
Description: Thornwood Management Co LLC submits a petition for acceptance of initial tariff, waivers and blanket authority and requests acceptance of Rate Schedule FERC 1.
Filed Date: May 8, 2006.
Accession Number: 20060515–0080.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–973–000.
Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.
Description: Applicants submit a notice of cancellation of a Power Supply Agreement with Baltimore Gas & Electric Company, Rate Schedule Nos. 41, *et al.*
Filed Date: May 8, 2006.
Accession Number: 20060515–0079.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–975–000.
Applicants: Aquila Piatt County Power, LLC.
Description: Aquila Merchant Service, Inc on behalf of Aquila Piatt County Power, LLC submits its notice of cancellation of FERC Electric Tariff, Original Volume 1.
Filed Date: May 9, 2006.
Accession Number: 20060515–0006.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–976–000.
Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.
Description: Applicants submit a notice of cancellation of a Power Interchange and Resale Agreement with American Municipal Power-Ohio, Inc, Rate Schedule Nos. 49, *et al.* Filed Date: May 8, 2006.
Accession Number: 20060515–0074.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–977–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Power Supply Agreement with Delmarva Power & Light Company, Rate Schedule Nos. 41, *et al.*

Filed Date: May 8, 2006.

Accession Number: 20060515–0073.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–978–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Power Supply Agreement with Philadelphia Edison, Rate Schedule Nos. 44, *et al.*

Filed Date: May 8, 2006.

Accession Number: 20060515–0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–979–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Transmission Agreement with Potomac Electric Power Company, Rate Schedule No 20.

Filed Date: May 8, 2006.

Accession Number: 20060515–0072.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–980–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Power Supply Agreement with Public Service Electric & Gas Company, Rate Schedule Nos. 42, et al.

Filed Date: May 8, 2006.

Accession Number: 20060515–0078.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–981–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Power Interchange and Resale Agreement with American Municipal Power-Ohio, Inc., Rate Schedule No. 49, et al.

Filed Date: May 8, 2006.

Accession Number: 20060515–0075.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–982–000.

Applicants: West Penn Power Company; Monongahela Power Company; The Potomac Edison Company.

Description: Applicants submit a notice of cancellation of a Power Supply Agreement with Pennsylvania Power & Light, Rate Schedule Nos. 43, et al.

Filed Date: May 8, 2006.

Accession Number: 20060515–0070.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–983–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits an Interconnection Facilities Study Agreement with Stirling Energy System Solar One, LLC.

Filed Date: May 8, 2006.

Accession Number: 20060515–0082.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–984–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corp submits notice of a change involving New York Power Authority Expansion Power delivered by NYSEG to certain customers.

Filed Date: May 8, 2006.

Accession Number: 20060515–0015.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–985–000.

Applicants: Valero Power Marketing LLC.

Description: Valero Power Marketing LLC submits its application for market-based rate authorization and request for waivers and blanket authorizations.

Filed Date: May 9, 2006.

Accession Number: 20060515–0084.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–986–000.

Applicants: Deseret Generation & Trans Co-operative., Inc.

Description: Deseret Generation & Transmission Co-operative, Inc submits its annual revisions for Schedule B–1 for Garkane Power Association, Inc. and Moon Lake Electric Association, Inc.

Filed Date: May 9, 2006.

Accession Number: 20060515–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–987–000.

Applicants: HLM Energy LLC.

Description: HLM Energy LLC submits its petition for acceptance of initial rate schedule, Rate Schedule FERC No. 1, waivers and blanket authority.

Filed Date: May 9, 2006.

Accession Number: 20060515–0083.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7879 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 17, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–1836–003.
Applicants: Community Energy, Inc.
Description: Community Energy, Inc submits a notice of Withdrawal of Rate Schedule FERC No. 1.
Filed Date: March 29, 2006.
Accession Number: 20060329–5083
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–408–001.
Applicants: Otter Tail Power Company.
Description: Otter Tail Power Co submits revised grandfathered service agreements under Midwest Independent Transmission System Operator, Inc open access transmission & energy market tariff in compliance with FERC's April 6, 2006 order.
Filed Date: May 8, 2006.
Accession Number: 20060517–0044.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–515–005.
Applicants: Atlantic City Electric Company.
Description: Atlantic City Electric Co on behalf of itself and the City of Vineland, NJ submits fully executed Amended Interconnection Agreement and on May 12, 2006 submitted an errata to its agreement.
Filed Date: May 8, 2006 and May 12, 2006.
Accession Number: 20060511–0067.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–662–004.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with Darlington Wind Farm, LLC and American Transmission Company.
Filed Date: May 8, 2006.
Accession Number: 20060517–0043.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–864–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with Forward Energy, LLC and American Transmission Company.
Filed Date: May 8, 2006.
Accession Number: 20060517–0032.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER05–1362–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a supplemental filing in response to Commission's October 17, 2005 order regarding its Facilities Construction Agreement.
Filed Date: May 12, 2006.
Accession Number: 20060515–0244.
Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–187–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with Valley View Transmission LLC and Great River Energy.
Filed Date: May 8, 2006.
Accession Number: 20060517–0041.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–668–001.
Applicants: Xcel Energy Services Inc.; Northern States Power Company
Description: Xcel Energy Services Inc on behalf of Northern States Power Company submits a compliance electric refund report in compliance with Commission order issued April 6, 2006.
Filed Date: May 10, 2006.
Accession Number: 20060510–5019.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 31, 2006.

Docket Numbers: ER06–764–001.
Applicants: Premcor Refining Group Inc.
Description: Premcor Refining Group Inc submits an amendment to its application for market-based rate authorization and request for wavier and blanket authorization filed March 16, 2006.
Filed Date: May 9, 2006.
Accession Number: 20060517–0034.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 30, 2006.

Docket Numbers: ER06–988–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc agent for Alabama Power Co et al submits Revision 2 to the Agreement for Network Integration Transmission Service for Southern Co Generation & Energy Marketing.
Filed Date: May 10, 2006.
Accession Number: 20060517–0033.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 31, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7900 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7758–004–MA]

City of Holyoke Gas & Electric Department; Notice of Availability of Environmental Assessment

May 18, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a subsequent license for the Holyoke No. 4 Project, located on the Holyoke Canal adjacent to the Connecticut River, in the City of Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent license for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Holyoke No. 4 Project No. 7758" to all comments. Comments may be filed electronically via 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 under the "eFiling" link. For further information, contact Jack Hannula at (202) 502–8917.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7962 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–22–000]

AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Sparrows Point Project, Request for Comments on Environmental Issues and Notice of a Joint Public Meeting

May 16, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Sparrows Point Liquefied Natural Gas (LNG) Project planned by AES Sparrows Point LNG, LLC (AES) and the associated pipeline planned by Mid-Atlantic Express LLC (Mid-Atlantic Express). The project would consist of an onshore LNG import and storage terminal located on the west shore of Sparrows Point, south of Dundalk, Maryland, and an approximately 87-mile natural gas sendout pipeline, extending north from the terminal to interconnects with existing pipelines of Transco, Tetco, and Columbia Gas Transmission near Eagle, Pennsylvania.

As a part of this evaluation, FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project and the Coast Guard will assess the maritime safety and security of the project. As described below, the FERC and the Coast Guard will hold a joint public meeting at Sparrows Point to allow the public to provide input to these assessments. The FERC will host additional public meetings along the pipeline route to provide input to the assessment of the pipeline component of the project.

The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. This Notice of Intent (NOI) explains the scoping process we [1] will use to gather information on the project from the public and interested agencies and summarizes the process that the Coast Guard will use. Your input will help identify the issues that need to be evaluated in the EIS and in the Coast Guard's maritime safety and security assessment. Please note that scoping comments are requested by June 16, 2006.

Comments on the project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this NOI. In lieu of sending written comments, we invite you to attend any of the following public scoping meetings or site visits scheduled as follows:

Monday, June 5, 2006, 7 p.m.:
North Point/Edgemere Volunteer Fire Co., 7500 North Point Road, Sparrows Point, MD, 410–477–1310.

Tuesday, June 6, 2006, 7 p.m.:
East Brandywine Fire Hall, 2096 Bondsville Road, Downingtown, PA, 610–269–1817.

Wednesday, June 7, 2006, 7 p.m.:
Harford Community College, 401 Thomas Run Road, Bel Air, MD, 410–836–4000.

FERC will be conducting a site visit of the proposed project route over a two-day period. The tour each day will begin and end at the locations and times listed below. Please note that no private property will be entered and all locations of anticipated alignment of the project pipeline will be viewed from public rights-of-way.

Tour Day 1, June 6, 2006

Tour Start Location—Sparrows Point Shipyard. **Note:** The Shipyard may not be open to the public on the day of the tour depending upon site work scheduled that day. Persons wishing to enter the Shipyard site must have photo identification. The Shipyard may not be entered without a security escort and all tour participants will need to meet in a marshalling area outside the security entrance for Sparrows Point Shipyard at the location shown on the map in Appendix 1. Follow signs for Bethlehem Blvd. west off of Rt 695 at Sparrows Point. Bethlehem Blvd. will turn into Riverside Drive as you near Bear Creek on the west side of Sparrows Point. Take the right hand turn at the flashing sign that says "All Shipyard Traffic to Sparrows Point" and park in the parking area before the security guard trailer.

Tour Start Time—8 a.m. The tour will depart promptly at 8:15 a.m. and will proceed from the marshalling area northerly along the proposed primary pipeline route. All attendees must provide their own transportation. Several locations that are publicly accessible will be visited along the route section between Sparrows Point and Bel Air, MD where the tour will end on Day 1. The Day 1 Tour will end on or near Walter's Mill Road north of Bel Air, MD, by 1 p.m.

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Tour Day 2, June 7, 2006

Tour Start Location—East Brandywine Fire Hall, 2096 Bondsville Road, near the intersection of Bondsville Road and Route 322. Tour Start Time—8 a.m. The Day 2 Tour will view the proposed pipeline route starting from an existing Columbia Gas Transmission compressor station in Eagle, PA, and will proceed south. All attendees must provide their own transportation. Several locations that are publicly accessible will be visited along the route section between Eagle, PA and Bel Air, MD where the tour will end on Day 2. The Day 2 Tour will end south of the Susquehanna River and north of Bel Air, MD in the area of Walter's Mill Road, by 1 p.m.

The first public scoping meeting listed above (Sparrows Point, MD) will be combined with the Coast Guard's public meeting regarding the maritime safety and security of the project. At the meeting, the Coast Guard will discuss: (1) The waterway suitability assessment that the applicant will conduct to determine whether or not the waterway can safely accommodate the LNG carrier traffic and operation of the planned LNG marine terminal; and (2) the facility security assessment that the applicant will conduct in accordance with the regulations of the Maritime Transportation Security Act to assist with the preparation of a Facility Security Plan. The Coast Guard will not be issuing a separate meeting notice for the maritime safety and security aspects of the project.

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR 105, and recommendation for siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard Captain of the Port (COTP) conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential area in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of the marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other federal, state, and local government agencies reviewing the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the applicant will be conducting a Waterway Suitability Assessment, a formal risk assessment evaluating the various safety and security aspects associated with the Sparrows Point LNG proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input in the risk assessment process. The results of the Waterway Suitability Assessment will be submitted to the Coast Guard to be used in determining whether the waterway is suitable for LNG traffic.

This NOI is being sent to Federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

The proposed project will consist of a 1.5 billion standard cubic feet per day (bscfd) LNG import terminal with unloading platforms, process equipment, boil-off compression system, and storage tanks, and a 28-inch-diameter, 87-mile send-out pipeline with ancillary facilities such as metering and flow-control facilities.

LNG Terminal Marine Facility

The Sparrows Point LNG Terminal will consist of the following:

- 500-foot marine finger pier/access trestle and unloading platform, supporting two unloading berths;
- Breasting and mooring dolphins;
- Turning basin and entrance channel
- Aids to navigation;
- Retractable security barrier;
- Three 1 million barrel (160,000 m^3) net capacity full containment LNG storage tanks.
- Process equipment;
- Boil-off gas (BOG) compression system; and
- Electrical, control, and hazard protection system.

Sendout Pipeline

The Mid-Atlantic Express sendout pipeline will consist of the following:

- A 87-mile, 28-inch-diameter natural gas pipeline with capacity to deliver 1.5 bscfd, and a maximum allowable operating pressure (MAOP) of 2200 pounds per square inch (psig).
- A SCADA system for remote monitoring, control and leak detection;
- Local interconnections with the Baltimore Gas & Electric (BG&E) pipeline system;
- Three interconnections with Columbia, Tetco and Transco pipeline systems near Eagle, PA.
- Mainline valve facilities, at approximately four to six locations;
- Metering, flow control/pressure control, and security systems; and
- Scrapper launcher/receiver facilities (pigging facilities).

AES and Mid-Atlantic Express propose to begin construction of the project in mid-2007 with a projected in-service date of the 1st quarter of 2011.

A location map depicting AES's proposed facilities, including its preferred pipeline route and several pipeline options, is attached to this NOI as Appendix 1 (Figures 1 and 2).[2]

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site (excluding maps) at the "e-Library" link or from the Commission's Public Reference Room or call (202)

The EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal or an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impacts that could result if it issues project authorizations to AES and Mid-Atlantic Express under sections 3 and 7 of the Natural Gas Act. The NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this NOI, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, maintenance, and abandonment of the proposed project under these general headings:

- Geology and Soils
- Water Resources
- Aquatic Resources
- Vegetation and Wildlife
- Threatened and Endangered Species
- Land Use, Recreation, and Visual Resources
- Cultural Resources
- Socioeconomics
- Marine Transportation
- Air Quality and Noise
- Reliability and Safety
- Cumulative Impacts

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this NOI.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. In addition, the Coast Guard, which would be responsible for reviewing the maritime safety and security aspects of the planned project and regulating maritime safety and security if the project is approved, has initiated its review of the project as well.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided in Appendix 2.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the project area, the planned facility information provided by AES and Mid-Atlantic Express, and the public open houses sponsored by AES and attended by FERC. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses.

- Impact of LNG ship traffic on other Chesapeake Bay and Patapsco River users, including fishing and recreational boaters.
- Safety issues relating to LNG ship traffic, including transit through Chesapeake Bay, passage under the Bay Bridge, and transit through the Brewerton Channel to Sparrows Point.
- Potential impacts on residents in the project area, including safety issues at the import and storage facility, noise, air quality, and visual resources.
- Potential impacts of the construction of the LNG terminal and the pipeline on property values.
- Potential impacts of dredging contaminated sediments on water quality and estuarine fishery resources (contaminants may include tri-butyl tin and PCBs).
- Project impacts on threatened and endangered species.
- Project impacts on wetlands, vegetation, and wildlife habitat.
- Project impacts on cultural resources.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 2, DG2E.
- Reference Docket No. PF06–22–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before June 16, 2006. Appropriate copies will be provided to the Coast Guard.

The Commission strongly encourages electronic filing of any comments in response to this NOI. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can file comments you will need to create a free account, which can be accomplished on-line.

The public scoping meetings (dates, times, and locations listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of each meeting will be

502–8371. For instructions on connecting to e-Library refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

generated so that your comments will be accurately recorded.

Once AES and Mid-Atlantic Express formally file their application with the Commission, you may want to become an "intervenor," which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

If you wish to remain on the environmental mailing list, please return the attached Mailing List Retention Form (Appendix 3 of this NOI). If you do not return this form, we will remove your name from our mailing list.

To reduce printing and mailing costs, the draft and final EIS will be issued in both compact disk (CD–ROM) and hard copy formats. The FERC strongly encourages the use of CD–ROM format in its publication of large documents. Thus, all recipients will automatically receive the EIS on CD–ROM. If you wish to receive a paper copy of the draft EIS instead of a CD–ROM, you must indicate that choice on the return mailer.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the project docket number excluding the last three digits (i.e., PF06–22) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FercOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, AES has established an Internet Web site for this project at *http://www.AESsparrowspointLNG.com*. The Web site includes a project overview, status, answers to frequently asked questions, and links to related documents. You can also request additional information by calling AES directly at (866) 640–9080.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7888 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–12–001]

Egan Hub Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Egan Horsepower Reconfiguration Project and Request for Comments on Environmental Issues

May 18, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Egan Horsepower Reconfiguration Project involving construction and operation of facilities by Egan Hub Storage, LLC (Egan Hub). The project would include an additional 3,080 horsepower (hp) and about 2,700 feet of suction and discharge piping at the Egan Gas Storage Facility in Evangeline, Acadia Parish, Louisiana.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Egan Hub provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Egan Hub proposes to:

1. Install two 13,330-hp turbine compressors in lieu of the three certificated not-yet-installed 7,860-hp reciprocating compressors;
2. Install seven catalytic converters on seven existing reciprocating compressors; and
3. Install 1,200 feet of 24-inch diameter suction piping and 1,500 feet of 20-inch diameter of discharge piping and associated appurtenant facilities.

Egan Hub also requests authorization to extend the construction period for the three storage caverns and associated facilities to October 1, 2009.

Egan Hub indicates that the project would not increase the maximum operating capacity of the three storage caverns (31.5 Bcf of certificated maximum aggregate operating capacity). In support of its proposal, Egan Hub indicates that the increase of 3,080 hp would allow Egan Hub to increase the maximum daily injection capability from 0.8 Bcf to 1.3 Bcf and the maximum daily withdrawal capability from 1.5 Bcf to 2.5 Bcf.

Egan Hub requests authorization on or before August 1, 2006 to begin construction by November 1, 2006.

Egan Hub indicates that it would "install minor non-jurisdictional facilities comprised of 500 feet of new below-ground powerline and a 480 volt transformer."

The location of the project facilities is shown in Appendix 1.[2]

[1] Egan Hub's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the

Land Requirements for Construction

Egan Hub indicates that no additional property or right-of-way would be required. Construction of the proposed facilities would be within the existing fenced line of the Egan Gas Storage Facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Cultural resources
- Vegetation and wildlife
- Water resources, fisheries, and wetlands
- Endangered and threatened species
- Air quality and noise
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have identified noise near residences as an issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Egan Hub. Additional issues may be identified based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP03–12–001.
- Mail your comments so that they will be received in Washington, DC on or before June 19, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

"eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

Appendix 1—Information Request

[Docket No. CP03–12–001]

☐ Please keep my name on the mailing list for the Egan Horsepower Reconfiguration Project.

Name _____

Agency _____

Address _____

City _____

State _____

Zip Code _____

☐ Please send me a paper copy of the environmental document instead of a CD.

FROM _____

_____

_____

ATTN: OEP—Gas 2, PJ—11.2, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Staple or Tape Here

[FR Doc. E6–7964 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 16, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for authorization for a temporary for a temporary change in water surface elevation limits for the upper reservoir and an increase in the maximum daily generation limit under certain emergency conditions as determined by ISO New England Inc. during the period June 3, through September 30, 2006, for dealing with potential capacity and energy shortages during the summer.

b. *Project No.:* 2485–033.

c. *Date Filed:* May 12, 2006.

d. *Applicant:* Northeast Generation Company (NGC).

e. *Name of Project:* Northfield Mountain Pumped Storage Hydroelectric Project.

f. *Location:* The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* 18 CFR 4.201.

h. *Applicant Contact:* Mr. William J. Nadeau, Vice President and Chief Operating Officer, Northeast Generation Services Company, 273 Dividend Road, Rocky Hill, Connecticut 06067, (860) 665–5315 with copies of all correspondence and communications to:

Mr. John Howard, Station Manager, Northfield Mountain Station, 99 Millers Falls Road, Northfield, Massachusetts 01360, (413) 659–4489; and

Ms. Catherine E. Shively, Senior Counsel, Public, Notrheast Utilities Service Company, P.O. Box 330, Manchester, New Hampshire 03105, (603) 634–2326.

i. *FERC Contact:* Any questions on Vedula Sarma (202) 502–6190, or *vedula.sarma@ferc.gov.*

j. *Deadline for filing motions to intervene, protests, comments:* June 1, 2006.

k. *Description of Proposed Action:* NGC seeks temporary authorization to modify the upper reservoir's upper and lower water service elevation limits from 1000.5 and 938 feet, to 1004.5 and 920 feet, respectively, only under certain ISO–NE emergency operating conditions from June 3, through September 30, 2006. According to NGC approval of changes in the water surface elevations would result in an increase in the maximum daily generation from 8,475 megawatthours (MWh) to 10,645 MWh. NGC states that it will not commence operations under the temporary amendment until the latter of June 3 or until data collected at Cabot Station, Turners Falls Project indicate that the Atlantic Salmon smolt migration has ended and guide net has been removed.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P–2485–028). All

documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7886 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

May 16, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No.:* 710–038.

c. *Date Filed:* April 27, 2006.

d. *Applicant:* Wolf River Hydro Limited Partnership.

e. *Name of Project:* Shawano Hydroelectric Project.

f. *Location:* The Shawano Project is located on the Wolf River in Shawano County, Wisconsin, and in part within the Menominee Indian Reservation (Menominee Reservation).

g. *Filed pursuant to:* 18 CFR 4.201.

h. *Applicant Contact:* Mr. Paul Nolan, Attorney for Wolf River Hydro Limited Partnership, 5515 North 17th Street, Arlington, VA 22205.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon (202) 502–8887, or *diana.shannon@ferc.gov*.

j. *Deadline for filing motions to intervene, protests, comments:* June 16, 2006.

k. *Description of Proposed Action:* The licensee proposes to amend its license to include certain provisions in the license regarding a number of environmental issues, such as the establishment of a resource enhancement fund, fisheries enhancement, gaging, upstream and downstream fish passage, and freshwater mussel restoration. These provisions are included as part of a Settlement Agreement to Amend License Terms, included with the application, signed by the licensee, the Menominee Indian Tribe of Wisconsin, and the U.S. Department of the Interior. The Wisconsin Department of Natural Resources also concurs with the proposed license amendments. The licensee states the proposed amendment would resolve pending appeals of the license, currently before the United States Court of Appeals for the District of Columbia Circuit.

l. *Locations of Applications*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket (project) number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P–710–038). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7887 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Comments, Recommendations, Terms and Conditions, and Prescriptions and Establishing a Revised Procedural Schedule for Relicensing

May 18, 2006.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Applications:* New Major Licenses.

b. *Project Nos.:* 12606–000 and 2545–091.

c. *Date Filed:* July 28, 2005.

d. *Applicant:* Avista Corporation.

e. *Name of Projects:* (1) Post Falls and (2) Spokane River Development of the Spokane River.

f. *Location:* Post Falls—on the Spokane River and Coeur d'Alene Lake in portions of Kootenai and Benewah counties, Idaho. The project occupies Federal lands under the supervision of the U.S. Bureau of Indian Affairs, and may occupy lands under the supervision of the U.S. Forest Service and the U.S. Bureau of Land Management.

Spokane River Developments—on the Spokane River in portions of Steven and Lincoln counties, Washington. No Federal lands are included.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bruce F. Howard, License Manager, Avista Corporation, 1411 East Mission, P.O. Box 3727, Spokane, Washington 99220–3727; telephone: (509) 495–2941.

i. *FERC Contact:* John S. Blair, at (202) 502–6092, *john.blair@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date 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: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing 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 for filing.

l. The Post falls hydroelectric development, has a seasonal storage capacity consisting of the 40,402 acre Coeur d'Alene Lake with a usable storage capacity of 223,100 acre-feet. The facility is composed of a 431-foot-long, 31-foot-high dam across the north channel of the Spokane River, a 127-foot-long, 25-foot-high dam across the south channel, and a 215-foot-long, 64-foot-high dam across the middle channel; six 56-foot-long, 11.25-foot-diameter penstocks; and a 6-unit powerhouse integral to the middle channel dam with a generator nameplate capacity of 14.75 megawatts.

The Spokane River Developments include four hydroelectric developments (HED) with a total authorized capacity of 122.92 MW as follows:

(1) Upper Falls HED is a run-of-river facility consisting of a 366-foot-long, 35.5-foot-high dam across the north channel of the Spokane River; a 70-foot-long, 30-foot-high intake structure across the south channel; an 800-acre-foot reservoir; a 350-foot-long, 18-foot-diameter penstock; and a single-unit powerhouse with a generator nameplate capacity of 10 MW.

(2) Monroe Street HED is a run-of-river facility consisting of a 240-foot-long, 24-foot-high dam; a 30-acre-foot reservoir; a 332-foot-long, 14-foot-diameter penstock; and an underground single-unit powerhouse with a generator nameplate capacity of 14.82 MW.

(3) Nine Mile HED is a run-of-river facility consisting of a 466-foot-long, 58-foot-high dam; a 4,600 acre-foot reservoir; a 120-foot-long, 5 foot-diameter diversion tunnel; and a 4-unit powerhouse with a nameplate capacity of 26.4 MW.

(4) Long Lake HED is a storage-type facility consisting of a 593-foot-long, 213-foot-high main dam; a 247-foot-long, 108-foot-high cutoff dam; a 105,080-acre-foot reservoir; four 236-foot-long, 16-foot-diameter penstocks; and a 4-unit powerhouse with a nameplate capacity of 71.7 MW.

m. A copy of the application is available for review in the Commission's Public Reference Room or may be viewed on its Web site: *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments or recommendations in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 386.211, and 385.214. In determining the appropriate action to take, the Commission will consider all comments and recommendations filed, but only those who have filed a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding.

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 protesting or intervening; 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 requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of all filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule (supercedes Procedural Schedule notice dated August 5, 2005) The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Notice soliciting comments, recommendations, terms and conditions, and prescriptions: May 18, 2006.

Comments, recommendations, terms and conditions, and prescriptions due: 60 days from issuance date of this notice.

Reply comments on recommendations, terms and conditions, and prescriptions due: 105 days from issuance date of this notice.

Notice of availability of draft EIS: December 30, 2006.

Notice of availability of final EIS: June 30, 2007.

Ready for Commission's decision on the application: September 30, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7960 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Article 405 of the License and Soliciting Comments, Motions To Intervene, and Protests

May 18, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to amend Article 405 of the license.

b. *Project No.:* P–2496–137.

c. *Date Filed:* March 17, 2006.

d. *Applicant:* Eugene Electric and Water Board.

e. *Name of Project:* Leaburg-Walterville Project.

f. *Location:* The project is located on the McKenzie River in Lane County, Oregon.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Suzanne Pierce, Compliance Manager, Eugene Water and Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440; Tel: (541) 984–4719.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address: *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* June 19, 2006.

k. *Description of Request:* Article 405 of the license for the Leaburg-Walterville Project requires the licensee to file final design plan for raising the water level of Leaburg Lake by 1.5 feet to provide additional hydraulic head needed to divert licensee's water right of 2,500 cubic feet per second. Because of local community opposition to the lake raise, the licensee proposes to raise the Leaburg Lake by a maximum of 6 inches rather than 1.5 feet.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7961 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–54–000]

Broadwater Energy, LLC; Notice of Technical Conference

May 18, 2006.

On Tuesday and Wednesday, June 6 and 7, 2006, at 9 a.m. (EDT), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed Broadwater Floating Storage Regasification Unit. The cryogenic conference will be held at the Danfords on the Sound located at 25 East Broadway, Port Jefferson, New York.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, state, and local agencies. Any person planning to attend the June 6 and 7 cryogenic conference *must register* by close of business on Monday, June 5, 2006. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to 202–208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. Upon arrival at the hotel, check the reader board in the hotel lobby for venue. For additional information regarding the cryogenic conference, please contact Phil Suter at *phillip.suter@ferc.gov* or 202–502–6368.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7958 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2601–007—North Carolina; P–2602–007—North Carolina; P–2686–032—North Carolina; P–2698–033—North Carolina]

Duke Power Company, LLC; Notice of Intention To Hold a Public Meeting To Discuss the Draft Environmental Assessment for the Tuckasegee Hydroelectric Projects

May 17, 2006.

On May 10, 2006, the Federal Energy Regulatory Commission (Commission) staff issued a Draft Environmental Assessment (DEA) for the relicensing of the Bryson, East Fork, and West Fork Hydroelectric Projects and for the surrender of the Dillsboro Hydroelectric Project.

The DEA was noticed in the **Federal Register** on May 17, 2006, and comments are due June 9, 2006. The DEA evaluates the environmental consequences of the operation and maintenance of the Tuckasegee Hydroelectric Projects in North Carolina. The DEA also evaluates the environmental effects of implementing the applicant's proposals, agency and non-governmental organization recommendations, staff's modifications, and the no-action alternative.

A public meeting is scheduled for Thursday, June 8, 2006, from 6 p.m. to 9 p.m. at the Jackson County Justice and Administration Building, Courtroom #2, 401 Grindstaff Cove Road; Sylva, NC 28779.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEA for the Commission's public record. These meetings will be recorded by an official stenographer.

For further information, please contact Carolyn Holsopple at (202) 502–6407, or by e-mail at *carolyn.holsopple@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7898 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1410–000; and EL05–148–000]

PJM Interconnection, L.L.C.; Supplemental Notice of Staff Technical Conference

May 17, 2006.

As announced in the Notice of Staff Technical Conference issued on May 1, 2006 and in the Commission's April 20, 2006 Order,[1] the Commission staff will hold a technical conference on Wednesday, June 7 and Thursday, June 8, 2006 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The purpose of the conference will be to address specific issues relating to the mechanisms to be used by PJM Interconnection, L.L.C. (PJM) to enable customers to satisfy reliability requirements. This conference is intended to be an informal working session focused solely on determining the appropriate parameters for the variable resource requirement, and the long term fixed resource adequacy requirement accepted in principle by the Commission in the April 20 Order. On June 7, the discussion will focus on the parameters of the variable resource requirement, and on June 8, the discussion will shift to the issue of long term fixed resource adequacy requirement. This supplemental notice provides additional information and an agenda for both days. The conference will be open for the public to attend. The conference will be held in the Commission Meeting Room.

All attendees will be welcome to participate to the extent possible. Parties who will participate in a conference panel will be asked to submit written comments of their position on the issues set forth above by May 30, 2006. In place of preliminary presentations from the panelists, staff will present questions to the panelists and ask for responses and discussion. To the extent that time permits during each panel, staff will also take questions or comments from the floor. Facilities for real-time PowerPoint presentations will not be available. All parties may file post-conference comments on or before June 22, 2006.

The conference will be transcribed. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary seven calendar days after FERC receives the transcript. The eLibrary is accessible to the public on the Internet at *http://ferc.fed.us/docs-filing/elibrary.asp*.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information regarding this conference, contact John McPherson at *John.McPherson@ferc.gov*.

Magalie R. Salas,

Secretary.

[1] *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006) (April 20 Order).

Attachment—Reliability Pricing Model in PJM

[Docket Nos. ER05–1410–000 and EL05–148–000]

June 7–8, 2006.

Technical Conference Agenda [2]

June 7, 2006 (9 a.m. to 5 p.m. (EST))

Panel I: Variable Resource Requirement

Panelists:

- Mr. Hisham Choueiki, Senior Energy Specialist, Public Utilities Commission of Ohio.
- Dr. Benjamin Hobbs on behalf of PJM.
- Mr. Ezra Hausman on behalf of the Coalition of Consumers for Reliability (CCR).
- Mr. Andrew Ott, Vice President of Market Services, PJM.
- Mr. Seth Parker on behalf of Midwest Generation, Edison Mission Energy, Consolidated Edison Energy, Conectiv Energy Supply and Constellation Energy Commodities Group.
- Mr. Raymond Pasteris on behalf of PJM.
- Mr. Matthew Picardi on behalf of Coral Power L.L.C.
- Mr. Robert Stoddard on behalf of Mirant parties.
- Mr. Jonathan Wallach on behalf of CCR.

Issues:

A. How should the height and slope of the downward sloping demand curve be determined? Should the curve be based on the net cost of new generation entry, or on other factors such as the value to customers of alternative levels of capacity?

B. If the demand curve is based on the cost of new generation entry, what is the

[2] Both this schedule and the list of panelists may change. The Commission will issue a further notice of such changes if time permits.

cost of new entry? How should these costs be determined?

C. How should expected revenues from the energy and ancillary service markets be estimated and how should they be used to adjust the height and slope of the demand curve?

D. What is the appropriate capacity level at which the capacity price should equal the net cost of new entry.

E. What is the appropriate slope or slopes for various portions of the demand curve?

F. What is the appropriate maximum price and the appropriate capacity level at which the price of capacity should fall to zero?

June 8, 2006 (9 a.m. to 5 p.m. (EST))

Panel II. Long Term Fixed Resource Adequacy Requirement

Panelists:

- Mr. Craig Baker, Senior Vice President, Regulatory Services, American Electric Power Service Corporation (AEP).
- Mr. Robert Bradish, Vice President, Transmission and Market Analysis, AEP.
- Mr. John Horstmann, Director of RTO Affairs, the Dayton Power and Light Company.
- Ms. Elizabeth Moler, Executive Vice President Government and Environmental Affairs and Public Policy, Exelon Corporation.
- Mr. Andrew Ott, Vice President of Market Services, PJM.
- Dr. Roy Shanker on behalf of PSEG Companies, FPL Energy L.L.C., Reliant Energy Inc., Constellation, Dominion Resources Services Inc.
- Mr. Robert Stoddard on behalf of Mirant parties.
- Mr. Stephen Wemple, Director, Retail and Regulatory Affairs, Consolidated Edison Energy.

Issues:

A. What should be the time period for which load serving entities (LSEs) must commit to using the long-term fixed resource requirement option?

B. What should be the level of deficiency charge needed to ensure compliance?

C. Should an LSE that fails to procure the full amount of capacity be precluded thereafter from using the long-term fixed resource requirement option?

D. How much capacity should the LSE be required to procure under this option?

[FR Doc. E6–7899 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 18, 2006.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus one point three percent (PPI+1.3). The Commission determined in an "Order Establishing Index For Oil Price Change Ceiling Levels" issued March 21, 2006, that PPI+1.3 is the appropriate oil pricing index factor for pipelines to use.[1]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics (BLS) publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 148.5 for 2004 and 155.7 for 2005.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2004 to 2005, plus 1.3 percent, is positive .061485.[3] Oil pipelines must multiply their July 1, 2005, through June 30, 2006, index ceiling levels by positive 1.061485[4] to compute their index ceiling levels for July 1, 2006, through June 30, 2007, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, 1995,[5] see *Explorer Pipeline Company*, 71 FERC ¶ 61,416 at n.6 (1995).

[1] 114 FERC ¶ 61,293 at P 2 (2006).

[2] BLS publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at [*http://www.bls.gov/ppi*]. To obtain the BLS data, click on "Get Detailed PPI Statistics," and then under the heading "Most Requested Statistics" click on "Commodity Data." At the next screen, under the heading "Producer Price Index—Commodity," select the first box, "Finished goods—WPUSOP3000", then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [155.7 – 148.5] / 148.5 = 0.048485 + .013 = 0.061485.

[4] 1 + 0.061485 = 1.061485.

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, *http://www.ferc.gov*. The table of multipliers can be found under the headings "Oil" and "Index".

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7963 Filed 5–23–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0237; FRL–8062–9]

Management Support Technology Inc. (MTSI); Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to MTSI in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). MTSI has been awarded multiple contracts to perform work for OPP, and access to this information will enable MTSI to fulfill the obligations of the contract.

DATES: MTSI will be given access to this information on or before May 30, 2006.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division

(7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address:*croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification number (ID) EPA–HQ–OPP–2006–0237; FRL–8062–9. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, Va. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

II. Contractor Requirements

Under the contract number EPA–W–06–038, the contractor will perform the following:

1. Assist each OPP Division with document handling and preparation for "scan ready" condition.

2. Operate OPP-supplied scanning equipment to produce 300 dpi resolution PDF documents.

3. Copy documents to designated areas on OPP Storage Area Network.

4. Create and maintain project logs for progress tracking.

5. Establish a document quality control program.

6. Perform quality control for all scanned pages.

This contract involves no subcontractors.

The OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with MTSI, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, MTSI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to MTSI until the requirements in this document have been fully satisfied. Records of information provided to MTSI will be maintained by the EPA Project Officer for this contract. All information supplied to MTSI by EPA for use in connection with this contract will be returned to EPA when MTSI has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: May 11, 2006.

Robert Forrest,

Acting Director, Office of Pesticide Programs.

[FR Doc. E6–7831 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8069–2]

Access to Confidential Business Information by the Food and Drug Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Food and Drug Administration (FDA) access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than May 31, 2006.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@.epa.gov*.

For technical information contact: Scott M. Sherlock, TSCA Security Staff, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202)564–8257; e-mail address: *sherlock.scott@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute.The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is

(202) 566–1744, and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/.*

II. What Action is the Agency Taking?

On March 22, 2006, in accordance with 40 CFR 2.209, the Associate Director for Research Policy and Implementation, of the Food and Drug Administration requested access to information collected through the authority of TSCA. Some of this information has been treated as CBI. FDA needs this information in connection to carrying out a pilot study with EPA by providing toxicology data and chemical structures for substances tested in genetic toxicity studies. FDA will supplement and enhance its battery Quantitative Structural Activity Relationship (QSAR) modules with the genetic toxicity data. The enhanced predictive genotoxicity QSAR modules will be made available to EPA to augment and improve EPA's capability to identify potentially genotoxic chemicals.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that the Agency will be providing FDA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this arrangement will take place at EPA Headquarters and FDA Headquarters located at 10903 New Hampshire Ave., Building 21, Room 1525, Silver Spring, Maryland 20993–0002.

Clearance for access to TSCA CBI under this arrangement may continue until June 1, 2011.

FDA personnel will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to the CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: May 18, 2006.

Vicki Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–7930 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0199;FRL–7767–6]

Source Reduction Assistance Grants Program for Seven of the Regional Pollution Prevention Program Offices; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of grant funds to States, Tribes, Intertribal Consortia, local governments, colleges/universities and non-profits in fiscal year (FY) 2006 under the Source Reduction Assistance (SRA) Grants Program. The program will support source reduction/pollution prevention projects that address the reduction or elimination of pollution at the source across all environmental media: Air, land, and water. EPA will issue SRA awards under the statutory authorities of the Clean Air Act, section 103(b) and (g); Clean Water Act, section 104(b)(3); Federal Insecticide, Fungicide, and Rodenticide Act, section 20; Safe Drinking Water Act, section 1442 (a)(1) and (c); Solid Waste Disposal Act, section 8001(a); and Toxic Substances Control Act, section 10. The total amount of funding available in FY 2006 is up to $163,000 for each of the seven participating EPA regional program offices or approximately $1.14 million in total funding. SRA awards will support pollution prevention activities during the FY 2006–2007 budget cycle. The maximum funding level per project is $100,000. You may access the full text of the grant announcement at *http://www.epa.gov/oppt/p2home/grants/index.htm*

DATES: For specific regional submission dates for proposals, please refer to the grant announcement at *http://www.epa.gov/oppt/p2home/grants/index.htm.*

FOR FURTHER INFORMATION CONTACT: Michele Amhaz, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8857; fax number: (202) 564–8899; e-mail address: *amhaz.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to States, Federally-recognized Tribes, Intertribal Consortia, local governments, independent school districts, public and private colleges/universities and non-profits. This notice may, however, be of interest to for-profit entities and individuals, who are not eligible to apply for funding under this program. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0199. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., 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 Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access.* You may obtain electronic copies of this document through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* You may access copies of the grant announcement at *http://www.epa.gov/oppt/p2home/grants/index.htm.*

II. Overview

The following listing provides certain key information concerning the proposal opportunity.

- *Federal agency name*: Environmental Protection Agency.
- *Funding opportunity title*: Source Reduction Assistance Grants Program.
- *Funding opportunity number*: EPA–OPPT–06–008.
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number*: 66.717.
- *Dates*: For specific regional submission dates for proposals, please refer to the grant announcement at *http://www.epa.gov/oppt/p2home/grants/index.htm.*

For detailed information concerning the grant announcement refer to the Agency website at *http://www.epa.gov/oppt/p2home/grants/index.htm.* The full text of the grant announcement includes specific information regarding the: Purpose and scope; activities to be

funded; award information; eligibility requirements; application and submission information; award review information; and regional agency contacts if applicable.

List of Subjects

Environmental protection, Grants, Pollution prevention.

Dated: May 11, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E6–7952 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0465; FRL–8069–9]

The Association of American Pesticide Control Officials (AAPCO)/State-FIFRA Issues Research and Evaluation Group (SFIREG); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State-FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on June 19, 2006 and ending June 20, 2006. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on June 19 from 9 a.m. to 5 p.m. and June 20, 2006 from 9 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: *mcduffie.georgia*@epa.gov or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843-1249; telephone number (802) 472-6956; fax: (802) 472-6957; e-mail address: aapco@plainfield.bypass.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you all parties interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides and insight into EPA's decision-making process are invited and encourage to attend the meetings and participate as appropriate Potentially affected entities may include, but are not limited to:

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rondenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0465. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

C. Tentative Agenda

1. Container Recycling Rule Making Discussion
2. WPS proposed Changes
3. Unique Label Identifiers - RAPID
4. Endangered Species Enforcement Concerns
5. NPDES - Pesticides in Water Discussion on Rule
6. Availability of Laboratory Methods to States
7. Budget, General Discussion and C & T Funding
8. EPA Update/Briefing:
   a. Office of Pesticide Program Update
   b. Office of Enforcement Compliance Assurance Update

List of Subjects

Environmental protection.

Dated: May 16, 2006.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs

FR Doc. E6–7931 Filed 5–23–06; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8174–3; Docket ID No. EPA–HQ–ORD–2006–0134]

A Framework for Assessing Health Risks of Environmental Exposures to Children

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer-Review Workshop.

SUMMARY: EPA is announcing that Eastern Research Group, Inc., an EPA contractor for external scientific peer review, plans to convene an independent panel of experts and organize and conduct an external peer review workshop to review the external review draft document titled, "A Framework for Assessing Health Risks of Environmental Exposures to Children" (EPA/600/R–05/093A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. This document is available on the Internet at: *http://cfpub.epa.gov/ncea/cfm/recordisplay/cfm?deid=150263.*

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. Eastern Research Group, Inc. invites the public to register to attend this workshop as observers. In addition, Eastern Research Group, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. The draft document and EPA's peer review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* On March 14, 2006, EPA announced a 45-day public comment period on the draft document (71 FR 13125). The public comment period and the external peer review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA has provided Eastern Research Group, Inc. with the public comments EPA received. In preparing a final report, EPA will consider public comments it received during the public comment period and will consider the Eastern Research Group, Inc. report of the comments and recommendations

from the external peer-review workshop.

DATES: The peer-review panel workshop will begin on June 6, 2006, at 8:30 a.m. and end at Noon on June 7, 2006.

ADDRESSES: The peer-review workshop will be held at Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW. The EPA contractor, Eastern Research Group, Inc., is organizing, convening, and conducting the peer review workshop. To attend the workshop, register by May 31, 2006, by calling Eastern Research Group, Inc. at 781–674–7374, sending a facsimile to 781–674–2906, or sending an e-mail to *meetings@erg.com*. You may also register via the Internet at *https://www2.ergweb.com/projects/conferences/ncea/childhra.htm*. Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public in the afternoon. Please let Eastern Research Group, Inc. know if you wish to make comments during the workshop. Space is limited, and reservations will be accepted on a first-come, first-served basis.

The draft "A Framework for Assessing Health Risks of Environmental Exposures to Children" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Technical Information Staff, NCEA-W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "A Framework for Assessing Health Risks of Environmental Exposures to Children". Copies are not available from Eastern Research Group, Inc.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the external peer-review workshop should be directed to Eastern Research Group, Inc., 100 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7260; facsimile: 781–674–2906; e-mail *erin.pittorino@erg.com*.

For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

If you need technical information about the document, please contact Stan Barone Jr., National Center for Environmental Assessment (NCEA); telephone: 202–565–3308; facsimile: 202–565–0076; e-mail *barone.stan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Over the past decade there has been a dramatic increase in the recognition and public health concern for the vulnerability of children to exposure to environmental agents. Children have unusual patterns of exposure and have vulnerabilities to chemical agents that are quite distinct from those of adults, and thus require special consideration in risk assessment. Children often have disproportionately higher exposures to certain environmental toxicants because, pound-for-pound of body weight, children have higher food and water intake and breathe more air than adults. Metabolic pathways in the young, especially in the first few months after birth, are immature, and the ability to detoxify environmental agents is different from that of adults. In addition, behavior and activity patterns of children often magnify their exposures. These factors imply that children are likely to have more substantial exposures than adults to certain environmental agents. This document attempts to organize and present current knowledge and practices in a programmatic framework for assessing human health risks from exposures to environmental agents from prior to conception through adolescence.

It describes this framework within the current Agency risk assessment paradigm, and includes problem formulation, analysis and risk characterization as discrete steps in the process. Moreover, this document focuses on mode of action as a context for considering the toxicokinetic and toxicodynamic differences between children and adults, and considers approaches for risk assessment in the context of uncertainty and variability in exposure and critical windows of development.

Dated: May 18, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 06–4817 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8173–7]

Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB to discuss EPA Regional science programs, review and approve one or more draft SAB Committee reports, and continue the planning of upcoming SAB meetings.

DATES: The dates for the meeting are Thursday, June 22, 2006, from 8:30 a.m.–5:30 p.m. through Friday, June 23, 2006, from 8 a.m.–12 noon (Eastern Time).

ADDRESSES: The meeting will be held at the U.S. EPA Region 2 Headquarters Office, 290 Broadway, Room 27A, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9982; by fax at (202) 233–0643; or by e-mail at: *miller.tom@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: At this meeting, the Science Advisory Board will: (a) Receive briefings from Regional management and scientists about regional science programs and identify opportunities for SAB and Regional

office interactions; and (b) review at least one draft SAB report. Any additional items to be discussed, as well as any draft reports to be reviewed, will be posted on the SAB Web site at *http://www.epa.gov/sab* prior to the meeting.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Mr. Miller, DFO, at the contact information provided above, by June 15, 2006, to be placed on the public speaker list for the June 22, 2006 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by June 15, 2006, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982, or via e-mail at *miller.tom@epa.gov*. To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 18, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–7927 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0460; FRL–8174–2]

Board of Scientific Counselors Computational Toxicology Subcommittee Meeting—June 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Computational Toxicology Subcommittee.

DATES: The meeting will be held on Monday June 19, 2006 from 9:30 a.m. to 5:30 p.m. The meeting will continue on Tuesday, June 20, 2006 from 9 a.m. to 3:15 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the U.S. EPA Research Triangle Park (RTP) Campus, EPA Main Building (Room C113), 109 T. W. Alexander Dr., Research Triangle Park, North Carolina 27711. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0460, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Mail:* Send comments by mail to: Board of Scientific Counselors Computational Toxicology Meeting—June 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–0460. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0460. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors Computational Toxicology Subcommittee Meeting—June 2006 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: Overviews of the Computational Toxicology Research Program (CTRP) Implementation Plan and National Center for Computational Toxicology (NCCT) activities; overviews of two Science to Achieve Results (STAR) Bioinformatics Centers; research project presentations on ToxCast, Virtual Liver, and Toxicogenomics; Communities of Practice presentations on Chemoinformatics, Chemical Prioritization, Biological Modeling, and Cumulative Risk; a poster session; and wrap up with presentation of Preliminary Findings, Draft Letter Report, and Action Items. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 16, 2006.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E6–7926 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0253; FRL–8068–4]

Propylene Oxide; Notice of Receipt of Request to Terminate Gum Uses on Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by ABERCO, Inc. to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective on June 23, 2006, unless the Agency receives a written withdrawal request on or before June 23, 2006. The Agency will consider withdrawal request postmarked no later than June 23, 2006.

Users of these products who desire continued use on crops or sites being deleted should contact ABERCO, Inc. on or before June 23, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0253, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket (ID) number EPA–HQ–OPP–2005–0253. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8041; e-mail address: *bartow.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket identification number (ID) [EPA–HQ–OPP–2005–0253; FRL–8068–4]. Publicly available docket materials are available either electronically at *http://www.regulations.gov*.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

II. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from registrant ABERCO, Inc. to voluntarily terminate edible gum (including but not limited to guar) and nonfood gum uses of 47870–1, 47870–2, and 47870–3 PPO product registrations. PPO is an insecticidal fumigant used on several food items such as processed spices, cocoa (beans and powder), and in-shell and processed nutmeats (except peanuts). PPO also has nonfood uses for bird seeds, cosmetic articles, gums, ores, packaging, pigments, pharmaceutical materials, and discarded nut shells prior to disposal. In a letter dated April 20, 2006, ABERCO, Inc. requested EPA to terminate PPO's use on all gums for pesticide product registrations identified in this notice (Table 1). Specifically, ABERCO, Inc. requests that all references to any gum use be deleted from the following, "For non food use as an insecticidal fumigant for the control of stored product insects in bird seed, cosmetic articles and ingredients, gums, ores, packaging, pigments, pharmaceutical materials, and discarded nut shells prior to disposal." In addition, ABERCO, Inc. requests that the following use be terminated and that any reference to it be deleted, "For non food use as an insecticidal fumigant for the control of stored product insects in gums."

ABERCO, Inc. requests provisions for sale, distribution, and use of existing stocks, as EPA defined that term at 56 Fed. Reg. 29362, as follows: (1) Registrants may sell and distribute existing stocks for one year from the date of this letter making the use termination request, and (2) The product may be sold, distributed, and used by people other than the registrant until their stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product. There will be no more PPO pesticide products registered in the United States for gum use.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
47870–1	Propylene Oxide	Propylene Oxide	edible gums (including but not limited to guar) and nonfood gums
47870–2	Propylene Oxide Technical	Propylene Oxide	edible gums (including but not limited to guar) and nonfood gums
47870–3	Propoxide 892	Propylene Oxide	edible gums (including but not limited to guar) and nonfood gums

Users of these products who desire continued use on crops or sites being deleted should contact ABERCO, Inc. (9430 Lanham Severn Road, Seabrook, MD 20706–2651) before June 23, 2006 to discuss withdrawal of the application for amendment. This 30 day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

III. What is the Agency's Authority for Taking this Action?

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The PPO registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30-day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30–days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Susan Bartow using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than June 23, 2006.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to this request for amendment(s) to terminate gum uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1: (1) The registrant may sell and distribute existing stocks for one year from the date of this letter making the use termination request, and (2) The product may be sold, distributed, and used by people other than the registrant until their stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product.

If the request for voluntary cancellation and use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 15, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–7832 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2002–0269; FRL–8061–8]

Ethoprop; Notice of Receipt of Request to Voluntarily Amend to Terminate Uses of Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend its registration to terminate certain uses of a pesticide product containing the emulsifiable concentrate (EC) formulation of the pesticide ethoprop. The request would terminate the EC formulation of ethoprop use in or on banana, cucumber, pineapple, and tobacco crops. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 23, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2002–0269, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*.Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID numberEPA–HQ–OPP–2002–0269. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation for this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0024; fax number: (703) 308–8005; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from the registrant, Bayer CropScience, to amend to terminate uses of EPA Registration Number 264–458, Mocap 6EC, product registration. In a letter dated February 17, 2006, Bayer CropScience requested EPA to amend to terminate uses of pesticide product registrations identified in Table 1 of this notice for use on banana, cucumber, pineapple, and tobacco crops. Specifically, the registrant identified that these crops had little to no usage of Mocap 6EC, and/or Mocap 6EC could not be applied in a manner consistent with the occupational handler engineering controls required by the 2001 Ethoprop Interim Reregistration Decision (IRED). Moçap 6EC is the only EC formulation of ethoprop registered in the United States. However, these uses remain on the granular formulation of ethoprop registered in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to amend to terminate uses of the EC formulation of ethoprop product registrations. The affected products and the registrant making the requests are identified in Tables 1 and 2 of this unit, respectively.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The ethoprop registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.— ETHOPROP PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product Name	Company
264–458	Mocap 6EC	Bayer Crop Science

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.— REGISTRANT REQUESTING VOLUNTARY AMENDMENTS.

EPA Company No.	Company name and address
264	Bayer CropScience 2 T.W. Alexander Drive P.O. Box 12014 Research Triangle Park, NC 27709

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request to Amend to Terminate Uses of the EC Formulation of Ethoprop Pesticide Products

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 23, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product has been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously

approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrant of the cancelled product. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 11, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–7932 Filed 5–23–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 16, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0763.

OMB Approval date: 04/26/2006.

Expiration Date: 04/30/2009.

Title: The ARMIS Customer Satisfaction Report.

Form No.: FCC Report 43–06.

Estimated Annual Burden: 7 responses; 5,040 total annual burden hours; 720 hours per respondent.

Needs and Uses: This collection was submitted as an extension to an existing collection. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS 43–06 Report reflects the results of customer satisfaction surveys conducted by individual carriers from residential and business customers. The ARMIS 43–06 captures trends in service quality as a result of consumer satisfaction surveys.

OMB Control No.: 3060–0848.

OMB Approval date: 04/26/2006.

Expiration Date: 04/30/2009.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form No.: N/A.

Estimated Annual Burden: 1,750 responses; 165,600 total annual burden hours; 05—44 hours per respondent.

Needs and Uses: This collection was submitted as an extension to an existing collection. This collection of information implements Section 251 of the Communications Act of 1934, as amended. In CC Docket Nos. 98–147 and 96–98, the Commission sought to further Congress's goal of promoting innovation and investment by all participating in the telecommunications marketplace, in order to stimulate competition for all services, including advanced services. In furtherance of this goal, the Commission imposes certain collections of information on incumbent local exchange carriers (LECs) in order to ensure compliance with the incumbent LEC's collocation obligations and to assist incumbent LECs in protecting network integrity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–7842 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; FCC 06–67]

Notice of Certification of Snap Telecommunications, Inc. as a Provider of Video Relay Service (VRS) Eligible for Compensation From the Interstate Telecommunications Relay Service (TRS) Fund

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants Snap Telecommunications, Inc. (Snap) certification as a VRS provider eligible for compensation from the Interstate TRS Fund. The Commission concludes that Snap has demonstrated that its provision of VRS will meet or exceed all operational, technical, and functional TRS standards set forth in the Commission's rules; that it makes available adequate procedures and remedies for ensuring compliance with applicable Commission rules; and that to the extent Snap's service differs from the mandatory minimum standards, the service does not violate the rules.

DATES: Effective May 8, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington DC 20554.

FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–0431 (TTY), or e-mail at *Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document FCC 06–67, released May 8, 2006, addressing an application for certification filed by Snap Telecommunications, Inc. on January 25, 2006. On May 9, 2006, the Commission released an Erratum to document FCC 06–67. *See Notice of Certification of Snap Telecommunications, Inc. as a Provider of Video Relay Service (VRS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, Erratum, in CG Docket No. 03–123, the full text of document FCC 06–67, the Erratum, and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 06–67, the Erratum, and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–67 and the Erratum can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Synopsis

On January 25, 2006, Snap Telecommunications, Inc. (Snap) filed an application for certification, (Snap

Telecommunications, Inc., *VRS Certification Application of Snap Telecommunications, Inc.*, CG Docket No. 03–123 (January 25, 2006)) as a VRS provider eligible for compensation from the Interstate TRS Fund (Fund) pursuant to the recently adopted VRS and Internet Protocol (IP) Relay provider certification rules. *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, CG Docket No. 03–123, FCC 05–203 (December 12, 2005); published at 70 FR 76208, December 23, 2005 (*2005 VRS Provider Order*); 47 CFR 64.605(a)(2) of the Commission's rules. Prior to the *2005 VRS Provider Order*, an entity desiring to offer TRS and receive compensation from the Fund had to meet one of the three eligibility standards set forth in 47 CFR 64.604(c)(5)(iii)(F) of the Commission's rules. Snap's application is granted, subject to the conditions noted below.

On December 12, 2005, the Commission released an order adopting new rules permitting carriers desiring to offer VRS and receive payment from the Fund to seek certification as a provider eligible for compensation from the Fund. *2005 VRS Provider Order, supra.* The rules require entities seeking such certification to submit documentation to the Commission setting forth, in narrative form:

> (i) a description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay); (ii) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered; (iii) a description of the provider's procedures for ensuring compliance with all applicable TRS rules; (iv) a description of the provider's complaint procedures; (v) a narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards; (vi) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; (vii) demonstration of status as a common carrier; and (viii) a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules. 47 CFR 64.605(a)(2) of the Commission's rules.

The rules further provide that after review of the submitted documentation, the Commission shall certify that the VRS provider is eligible for compensation from the Fund if the Commission determines that the certification documentation:

> (i) establishes that the provision of VRS * * * will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604 of the Commission's rules; (ii) establishes that the VRS * * * provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604 of the Commission's rules, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and (iii) where the TRS service differs from the mandatory minimum standards contained in § 64.604 of the Commission's rules, the VRS * * * provider establishes that its service does not violate applicable mandatory minimum standards. 47 CFR 64.605(b)(2) of the Commission's rules.

The Commission has reviewed Snap's application pursuant to these rules. The Commission concludes that Snap has demonstrated that its provision of VRS service will meet or exceed all operational, technical, and functional TRS standards set forth in 47 CFR 64.604 of the Commission's rules; that it makes available adequate procedures and remedies for ensuring compliance with applicable Commission rules; and that to the extent Snap's service differs from the mandatory minimum standards, the service does not violate the rules. *See, e.g., Snap Application* at 14 (noting that Snap will offer picture caller ID).

The Commission also notes, however, that Snap indicates that it plans to offer service only via a particular Internet protocol that, without translation, is not interoperable with videophone devices employed by other VRS providers. *See generally Snap Application* at 6 (noting the H.323 and SIP Internet standards); Snap *ex parte* letter, CG Docket No. 03–123 (filed March 31, 2006); Snap *ex parte letter*, CG Docket No. 03–123 (filed March 22, 2006). The Commission notes that it has adopted a declaratory ruling requiring the interoperability of VRS equipment and services. *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, Declaratory Ruling and Further Notice of Proposed Rulemaking, FCC 06–57 (adopted May 3, 2006) (addressing California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), *Petition for Declaratory Ruling on Interoperability*, CC Docket No. 98–67, CG Docket No. 03–123, DA 05–509 (filed February 15, 2005)). The Commission conditions this grant of certification upon compliance with that order. *See also* 47 CFR 64.605(e)(2) of the Commission's rules (Commission may require certified providers to submit documentation demonstrating compliance with the mandatory minimum standards). Further, Snap must file an annual report with the Commission evidencing that they are in compliance with § 64.604 of the Commission's rules. *See* 47 CFR 64.605(g) of the Commission's rules. The first such report shall be due one year after May 8, 2006, and subsequent reports shall be due each year thereafter.

This certification, as conditioned herein, shall remain in effect for a period of five years from the release date of May 8, 2006. *See* 47 CFR 64.605(c)(2) of the Commission's rules. Within ninety days prior to the expiration of this certification, Snap may apply for renewal of its VRS service certification by filing documentation in accordance with the Commission's rules. *See* 47 CFR 64.605(c)(2) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–4729 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's ("FCC") Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks ("Independent Panel" or "Panel") will hold its final meeting on June 9, 2006 at 10 a.m. at the Commission Meeting Room of the FCC, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

DATES: June 9, 2006 at 10 a.m.

ADDRESSES: Commission Meeting Room, FCC, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Designated Federal Officer of the FCC's Independent Panel at 202–418–7452 or e-mail: *lisa.fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Panel will consider and vote on a report that addresses the impact of Hurricane Katrina on communications infrastructure, including public safety communications, and includes recommendations for improving disaster preparedness, network reliability and communications among first responders

("Panel Report"). The Panel Report is due to the FCC by June 15, 2006. As part of its consideration, the Panel may vote on proposed amendments to the Panel Report, if any.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Real Audio access to the meeting will be available at *http://www.fcc.gov*. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. To request accommodations, send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Include a description of the accommodation you will need with as much detail as possible. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

The public may submit written comments before the meeting to: Lisa M. Fowlkes, the FCC's Designated Federal Officer for the Independent Panel at: *lisa.fowlkes@fcc.gov* or by U.S. Postal Service Mail (Lisa M. Fowlkes, Designated Federal Officer, Hurricane Katrina Independent Panel, Federal Communications Commission, 445 12th Street, SW., Room 7–C737, Washington, DC 20554). Publicly available documents regarding the Independent Panel are available for inspection and copying at the FCC's Public Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information about the Independent Panel may also be found on the Panel's Web site at *http://www.fcc.gov/eb/hkip*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–7843 Filed 5–23–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010761–001.

Title: Somers Isles Shipping Agreement.

Parties: Bermuda Container Line Limited; Bermuda International Shipping, Ltd.; and Somers Isles Shipping Limited.

Filing Party: Wade S. Hooker, Jr., Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The agreement updates the parties' joint service agreement covering the Florida/Bermuda trade.

Agreement No.: 011117–038.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S and Safmarine Container Lines NV; Australia-New Zealand Direct Line; CMA–CGM, S.A.; Compagnie Maritime Marfret S.A.; CP Ships USA, LLC; FESCO Ocean Management Limited; Hamburg-Süd; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Hapag-Lloyd Container Linie GmbH as a party to the agreement.

Agreement No.: 011794–005.

Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; YangMing (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street, Suite 850; Irvine, CA 92614.

Synopsis: The amendment increases the number of vessels used under the agreement as well as the total TEU capacities.

Agreement No.: 011959.

Title: Zim/ESL Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Emirates Shipping Line FZE.

Filing Party: Jeffrey F. Lawrence, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to contribute vessels to a service and share space in the trades between ports on the U.S. Gulf Coast, on the one hand, and ports in Jamaica, Panama, Korea, and China, on the other hand. The parties request expedited review.

Agreement No.: 011960.

Title: The New World Alliance Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: David B. Cook, Esq.; Goodwin Procter LLP; 901 New York Avenue, NW; Washington, DC 20001.

Synopsis: The agreement authorizes the parties to deploy, schedule and share space on vessel services operating between the U.S. Pacific, Atlantic and Gulf Coasts, on the one hand, and the Far East (including countries bordered by the Indian Ocean and nearby waters), Northern Europe, Panama, countries bordered by the Mediterranean Sea, and the Canadian Pacific Coast, on the other hand. The agreement consolidates and replaces three existing agreements under which The New World Alliance parties currently operate.

Agreement No.: 011961.

Title: The Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia; A.P. Moller-Maersk A/S; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Hamburg-Süd; Hapag-Lloyd Container Linie GmbH; Hoegh Autoliners A/S; Independent Container Line Ltd.; Montemar Maritima S.A.; Norasia Container Lines Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize any two or more parties to meet, discuss, and exchange information with respect to their respective billing and/or collection practices. It expressly precludes the parties from agreeing on credit rules, credit policy, credit terms, rates, or the conditions under which credit will or will not be granted.

By Order of the Federal Maritime Commission.

Dated: May 19, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–7942 Filed 5–23–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 06–06]

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.—Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 CFR 515.27; Order of Investigation and Hearing

Euroamerica Group, Inc. ("Euroamerica") was incorporated in the State of Maryland on May 23, 1994. The President and Qualifying Individual ("QI") of Euroamerica was Mr. Mark Nash. Euroamerica operated as a licensed non-vessel-operating common carrier ("NVOCC") until December 2005 when it merged with Deliver USA, Inc. The surviving corporation, EuroUSA Shipping, Inc. ("EuroUSA"), continues to operate as a licensed and tariffed NVOCC. EuroUSA maintains an NVOCC bond in the amount of $75,000. The company's principal place of business is located at 10610 Iron Bridge Road, Unit 6, Jessup, Maryland 20794. Mr. Nash continues to serve as the President and QI of EuroUSA.

Based on evidence available to the Commission, it appears that between February 2004 and December 2005, EuroUSA knowingly and willfully accepted cargo from or transported cargo for the account of several ocean transportation intermediaries ("OTIs") that did not have tariffs and bonds as required by sections 8 and 19 of the Shipping Act of 1984 ("the Act") and the Commission's regulations at 46 CFR 515.27.

Tober Group, Inc. ("Tober") was incorporated in the State of New York on March 1, 1996. The President and QI of Tober is Mr. Yonatan Benhaim. Tober received a license to operate as an ocean freight forwarder ("OFF") on July 17, 1996. In 1999, Tober applied for and received a license to operate as an NVOCC. Tober is presently active as a licensed and tariffed NVOCC and OFF with a principal place of business at 185 Randolph Street, Brooklyn, New York 11237. Tober maintains an NVOCC bond in the amount of $75,000 and an OFF bond in the amount of $50,000. Tober publishes its electronic tariff at *http://www.dpiusa.com*. The single commodity covered by this tariff is "Cargo, N.O.S." and the tariff has not been updated since its original issue on January 7, 2004. The tariff rate for Tober's N.O.S. cargo is $500 per 1,000 kilograms or 1 cubic meter, whichever yields the higher amount.

Based on evidence available to the Commission, it appears that between May 2004 and December 2005, Tober knowingly and willfully accepted cargo from or transported cargo for the account of several OTIs that did not have tariffs and bonds as required by sections 8 and 19 of the Act and the Commission's regulations at 46 CFR 515.27. Section 10(b)(2)(A) of the Act states that no common carrier may provide service in the liner trade that is not in accordance with the rates and charges contained in a published tariff. 46 App. U.S.C. 1709(b)(2)(A). It appears that from at least January 2004, Tober has provided liner service to its shippers that was not in accordance with the $500 Cargo, N.O.S. rate published in its electronic tariff.

Container Innovations, Inc. ("CI") was incorporated in the State of New Jersey on March 27, 1985 and is presently located at 123 Pennsylvania Avenue, Kearny, New Jersey 07032. The President and QI of CI is Mr. Angelo J. Carrera. CI has been a licensed NVOCC since September 1999 and maintains an NVOCC bond in the amount of $75,000.

Based on evidence available to the Commission, it appears that between September 2004 and March 2006, CI knowingly and willfully accepted cargo from or transported cargo for the account of several OTIs that did not have tariffs and bonds as required by sections 8 and 19 of the Act and the Commission's regulations at 46 CFR 515.27.

Section 10(b)(11) of the Act, 46 App. U.S.C. 1709(b)(11), prohibits any common carrier from knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that does not have a tariff and a bond as required by sections 8 and 19 of the Act. The Commission's regulations at 46 CFR 515.27 affirm this statutory requirement. Any OTI operating as an NVOCC in the United States must provide evidence of financial responsibility in the amount of $75,000. 46 CFR 515.21. Furthermore, section 8(a) of the Act, 46 App. U.S.C. 1707(a), requires NVOCCs to maintain open to public inspection in an automated tariff system, tariffs showing their rates, charges, classifications and practices. Information gathered thus far indicates each of the Respondents provided ocean transportation services to entities known to be operating as unlicensed NVOCCs. A person is subject to a civil penalty of not more than $30,000 for each violation knowingly and willfully committed. 46 CFR part 506.

Now therefore, it is ordered, That pursuant to section 11(c) of the Shipping Act of 1984, 46 App. U.S.C. 1710(c), an investigation is instituted to determine:

(1) Whether the Respondents violated section 10(b)(11) of the Shipping Act of 1984 and the Commission's regulations at 46 CFR 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act;

(2) Whether Respondent Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges contained in a published tariff.

(3) Whether, in the event one or more violations of section 10 of the Act and/or 46 CFR 515.27 are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed;

(4) Whether, in the event violations are found, appropriate cease and desist orders should be issued; and

(5) Whether, in the event violations are found, such violations constitute grounds for the revocation of any Respondent's OTI license pursuant to 46 CFR 515.16.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That the following corporate entities be designated as Respondents in this proceeding:

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.;

It is further ordered, That the Commission's Bureau of Enforcement be designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal**

Register, and a copy be served on the parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by May 11, 2007 and the final decision of the Commission shall be issued by September 11, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–7874 Filed 5–23–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
004403NF	"A" Pacific Express, Enterprises, 2145 N. Tyler Avenue, Suite B, South El Monte, CA 91733	November 6, 2005.
004309F	East West North South Forwarding, Inc., 3511 NW 113 Court, Miami, FL 33178	March 29, 2006.
004657F	Ocean Transportation Services, LLC, 500 Union Street, Ste. 701, Seattle, WA 98101–2369	April 13, 2006.
006861N	Transconex Incorporated, dba Caribe Best Services, 450 Shattuck Ave South, Suite 401, Renton, WA 98055.	February 18, 2006.
019271NF	Xima Freight Services, Inc., 8217 N.W. 66th Street, Miami, FL 33166	April 1, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–7950 Filed 5–23–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 000994F.
Name: ACME International, Inc.
Address: 5106 No. Cicero Avenue, Chicago, IL 60630.
Date Revoked: April 28, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014586N.
Name: American Freight Liners Inc.
Address: 525 Milltown Road, Suite 304, North Brunswick, NJ 08902.
Date Revoked: April 7, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014617N.
Name: Asiana Transport Inc.
Address: 510 Plaza Drive, Suite 2275, Atlanta, GA 30349.
Date Revoked: May 3, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018915NF.
Name: C & J International Forwarding, Inc.
Address: 2659 West 76th Street, Hialeah, FL 33016.
Date Revoked: May 2, 2006.
Reason: Surrendered license voluntarily.

License Number: 015150N.
Name: Carjam Shipping, Inc.
Address: 8524 NW 72nd Street, Miami, FL 33166.
Date Revoked: April 23, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018763N.
Name: Dietrich-Exccel, LLC dba Dietrich-Logistics Florida.
Address: 6701 NW 7th Street, Suite 135, Miami, FL 33126.
Date Revoked: April 9, 2006.
Reason: Failed to maintain a valid bond.

License Number: 000810F.
Name: Dominion International, Inc.
Address: 121 West Tazewell Street, Norfolk, VA 23510.
Date Revoked: April 20, 2006.
Reason: Surrendered license voluntarily.

License Number: 017778F.
Name: ESI Freight (USA) Inc.
Address: Cargo Bldg. 9, JFK Int'l Airport, Suite 250, 2nd Floor, Jamaica, NY 11430.
Date Revoked: May 12, 2006.
Reason: Surrendered license voluntarily.

License Number: 016848N.
Name: eKKa Forwarding, Inc.
Address: 223 Bergen Turnpike, Bldg. 3, Ridgefield Park, NJ 07660.
Date Revoked: April 29, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004665F.
Name: First Unicorn International, Inc.
Address: 9080 Telstar Avenue, Suite 308, El Monte, CA 91731.
Date Revoked: May 4, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018286N.
Name: Frederic Int'l Co., LLC.
Address: 17973 Arenth Avenue, City of Industry, CA 91748.
Date Revoked: May 7, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018562N.
Name: Global Tassili Transport Services, Inc.
Address: 8206 Fairbanks No. Houston, Houston, TX 77064.
Date Revoked: April 13, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004268F.
Name: J & S Universal Services, Inc. dba Patrick & Rosenfeld Shipping Corp.
Address: 12972 SW 133rd Court, Suite A, Miami, FL 33186.
Date Revoked: April 12, 2006.

Reason: Failed to maintain a valid bond.

License Number: 019407F.
Name: James Worldwide, Inc.
Address: 550 E. Carson Plaza Drive, Suite 123, Carson, CA 90746.
Date Revoked: April 28, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017975F.
Name: Johnny Air Cargo Inc.
Address: 69–40 Roosevelt Avenue, Woodside, NY 11377.
Date Revoked: April 30, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019250N.
Name: MLR Exports Inc. dba MLR Export Consolidations.
Address: 8090 NW 71st Street, Miami, FL 33166.
Date Revoked: May 1, 2006.
Reason: Failed to maintain a valid bond.

License Number: 009792N.
Name: Novocargo USA, Inc.
Address: 1102 Bayview Avenue, Barnegat Light, NJ 08006.
Date Revoked: April 13, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018181NF.
Name: OWS Logistics, Inc.
Address: 1000 Corporate Center Drive, Ste. 120, Monterey Park, CA 91754.
Date Revoked: March 31, 2006.
Reason: Surrendered license voluntarily.

License Number: 014369N.
Name: One Stop Cargo Services, Inc.
Address: 4636 NW 74th Avenue, Miami, FL 33166.
Date Revoked: April 21, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018218N.
Name: Pacheco Express Shipping Inc.
Address: 1570 Webster Avenue, Bronx, NY 10457.
Date Revoked: April 30, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017487F.
Name: Pacmil Logistics.
Address: 6155 Cornerstone Court East, Suite 100, San Diego, CA 92121.
Date Revoked: May 7, 2006.
Reason: Failed to maintain a valid bond.

License Number: 011170F.
Name: Sage Freight Systems Inc. dba Sage Container Lines.
Address: 182–30 150th Road, Suite 108, Jamaica, NY 11413.
Date Revoked: April 6, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016316N.
Name: Surf Carriers, Inc.
Address: 1801 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: April 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 000750F.
Name: Thomas E. Flynn & Co.
Address: 2525 SW 3rd Avenue, #410, Miami, FL 33129.
Date Revoked: April 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017740N.
Name: Unified Parcel Express dba UPEX.
Address: Cargo Bldg., #80, Room 223, JFK International Airport, Jamaica, NY 11430.
Date Revoked: April 30, 2006.
Reason: Failed to maintain valid bond.

License Number: 018749N and 018749F.
Name: Venture Logistics, Inc.
Address: 10820 NW 30th Street, Miami, FL 33172.
Date Revoked: April 13, 2006 and February 19, 2006.
Reason: Failed to maintain valid bonds.

License Number: 001763NF.
Name: Vertex Freight Systems, Inc.
Address: 9900 NW 25th Street, Suite 220, Miami, FL 33172.
Date Revoked: April 30, 2006.
Reason: Failed to maintain a valid bond.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–7951 Filed 5–23–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Sobe Enterprises, Inc. dba Sobe Export Services, Claude Sterling, President. (Qualifying Individual). David Desrouleaux, Vice President.

Golden Bell Transport Services, 9393 Activity Road, Ste. E, San Diego, CA 92126. Lemuel R. Bravo. Sole Proprietor.

Unique Logistics International (LAX) Inc., 10410 S. La Cienega Blvd., Inglewood, CA 90304. Officers: Terry Tsang, Secretary, (Qualifying Individual), Richard Chi Tak Lee, CEO.

Daily Freight Cargo Corp., 8538 NW 70 Street, Miami, FL 33166. Officers: Pedro David Esteller Bangel, President, (Qualifying Individual), Teresa De Vincenzo, Secretary.

Wellmax Logistics Company, Ltd., 148–36 Guy R. Brewer Blvd., Ste. 203, Jamaica, NY 11434. Officer: Timothy Yan, President. (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Sistemas Aereos LLC, 11005 NW 33rd Street, Doral, FL 33172. Officer: Charles V. Eggleton, General Manager. (Qualifying Individual).

Jenson Logistics, Inc. dba Jenson International, 617 E. Hermosa Drive, San Gabriel, CA 91775. Officers: Shin-Chen Liu, CFO. (Qualifying Individual). Jack Yu-Sheng Liau, CEO.

Concord International Transport, Inc., 10100 N.W. 116 Way, #14, Medley, FL 33178. Officers: Adriana Gonzalez, Vice President. (Qualifying Individual). Yogui Gonzalez President.

Max Global Group, Inc., 2420 Camino Ramon, Ste. 220, San Ramon, CA 94583. Officer: Joan Yan Ma, President. (Qualifying Individual).

Eco Logistics USA, Inc., 661 Shenandoah Trail, Elgin, IL 60123. Officer: Naushad A. Imam, President. (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

TSC Logistics, LLC, 2500–b Browning Highway, Suite 100, Baltimore, MD 21224. Officer: Damon M. Gunter, Vice President. (Qualifying Individual).

International Distribution Forwarding, Inc., 7204 N.W. 25th Street, Miami, FL 33122. Officer: Edwin Acevedo, Treasurer. (Qualifying Individual).

Dated: May 19, 2006.
Bryant L. VanBrakle,
Secretary.
[FR Doc. E6–7967 Filed 5–23–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2006.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Berkshire Bancorp, Inc., Wyomissing, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Berkshire Bank, Wyomissing, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Mid–America Bancshares, Inc., Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the South, Mt. Juliet, Tennessee, and PrimeTrust Bank, Nashville, Tennessee.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana, and Glacier Holdings, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of Citizens Development Company, Billings, Montana, and thereby indirectly acquire voting shares of First Citizens Bank of Billings, Billings, Montana; First National Bank of Lewistown, Lewistown, Montana; Western Bank of Chinook, N.A., Chinook, Montana; First Citizens Bank, N.A., Columbia Falls, Montana; and Citizens State Bank, Hamilton, Montana.

In connection with this application, Glacier Holdings, Inc., has applied to become a bank holding company by merging with Citizens Development Company, Billings, Montana.

Board of Governors of the Federal Reserve System, May 19, 2006.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. E6–7941 Filed 5–23–06; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0457]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV, STD, and TB Prevention, Division of Tuberculosis Elimination (DTBE) is requesting a 3-year extension of OMB No. 0920–0457, to continue the Aggregate Reports for Tuberculosis Program Evaluation. There are no revisions to the report forms, data definitions, or reporting instructions.

In order to facilitate the elimination of tuberculosis in the United States, key program activities must continue to be monitored. These key activities include finding tuberculosis infections in recent cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection.

In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate Report of Follow-up for Contacts of Tuberculosis and Aggregate Report of Screening and Preventive Therapy for Tuberculosis Infection. The respondents for the reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through DTBE. The reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, programmed electronic report entry and submission through the Tuberculosis Information Management System (TIMS).

CDC is the only federal agency collecting this type of national tuberculosis data. These reports are the only data sources about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and state levels of public health. CDC also provides respondents with technical support for the TIMS software.

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State and Local TB Control Programs	68	1	1½	102
State and Local TB Control Programs	68	1	1½	102
Total				204

Dated: May 17, 2006.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–7907 Filed 5–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop: Operationalizing Privacy: Compliance Frameworks & Privacy Impact Assessments

AGENCY: Privacy Office, DHS.

ACTION: Notice announcing public workshop.

SUMMARY: The Department of Homeland Security Privacy Office will host a public workshop, "Operationalizing Privacy: Compliance Frameworks & Privacy Impact Assessments," to explore policy, legal, and operational frameworks for Privacy Impact Assessments (PIAs) and Privacy Threshold Analyses (PTAs).

DATES: The workshop will be held on Thursday, June 15, 2006, from 8:30 a.m. to 4 p.m.

ADDRESSES: The workshop will be held in the Auditorium of the GSA Regional Headquarters, 7th & D Streets, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kathleen Kavanaugh, Privacy Office, Department of Homeland Security, Arlington, VA 22202 by telephone (571) 227–3813, by facsimile (571) 227–4171, or by e-mail *privacyworkshop@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Privacy Office is holding a public workshop to explore the compliance and operational frameworks of privacy, including training on drafting Privacy Impact Assessments (PIAs) and Privacy Threshold Analyses (PTAs).

The program will be organized into two sessions, a morning and an afternoon session. The morning session will include two discussion panels. The first panel will cover the compliance and operational frameworks required to integrate privacy protections into any organization. The second panel will cover compliance with Federal requirements for privacy, including System of Records Notices, PIAs, Certification & Accreditation under the Federal Information Security Management Act, and the Office of Management and Budget annual budget process (OMB–300). In addition to the panel discussions, time will be allotted during the workshop for questions and comments from the audience.

The afternoon session will be a tutorial on how to write PIAs and PTAs. A case study will be used to illustrate a step-by-step approach to researching, preparing, and writing these documents.

The workshop is open to the public and there is no fee for attendance. For general security purposes, the GSA Regional Headquarters requires that all attendees show a valid form of photo identification, such as a driver's license, to enter the building.

The DHS Privacy Office has developed PIA guidance and templates for PIAs and PTAs for DHS programs. The guidance and templates are posted on our Web site at *http://www.dhs.gov/privacy*. In addition, the Privacy Office will post information about the workshop, including a detailed agenda, on the Web site prior to the event. A transcript of the workshop will be posted shortly after the workshop.

Registration: Registration is recommended but not required. Registration guarantees admittance. For non-registrants seating will be allocated on a first-come, first-served basis, so please arrive early. For seating purposes, when registering, please specify if you plan to attend the entire conference or just one of the two sessions. Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to identify anticipated special needs as early as possible. You may register by e-mail at *privacyworkshop@dhs.gov* or by calling (571) 227–3813.

Dated: May 16, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Chief Freedom of Information Act Officer.

[FR Doc. E6–7905 Filed 5–23–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24851]

Proposed Decommissioning and Excessing of the USCGC STORIS (WMEC–38) and USCGC ACUSHNET (WMEC–167); Preparation of Environmental Assessment

AGENCY: Coast Guard, DHS.

ACTION: Notice of preparation of environmental assessment; request for comments.

SUMMARY: The U.S. Coast Guard (USCG) announces its intent to prepare an environmental assessment (EA) on the proposed decommissioning and excessing of the U.S. Coast Guard Cutter (USCGC) STORIS (WMEC–38), homeported in Kodiak, AK, and USCGC ACUSHNET (WMEC–167), homeported in Ketchikan, AK. This notice provides information on the proposed action, requests public comments on environmental impacts that might occur from the proposed action, and provides instructions on how to submit comments to the USCG.

DATES: Comments and related material must reach the Coast Guard on or before June 23, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–24851 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov*.

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Ms. Susan Hathaway, USCG, telephone: 202–267–4073,or send e-mail to: *shathaway@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed decommissioning and excessing of the USCGC STORIS (WMEC–38) and USCGC ACUSHNET (WMEC–167).

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2006–24851) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on "Simple Search," enter the last five digits of the docket number for this notice, and click on "Search." You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Background

Preparation of the EA is being conducted in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(C) and its implementing regulations at Title 40, Code of Federal Regulations, Part 1500. USCGC STORIS (WMEC–38) was constructed in 1942 for patrol along Greenland's waters during WWII and was the first U.S. registered vessel to circumnavigate the North American continent.

The USCGC ACUSHNET (WMEC–167) was commissioned in Napa, California, on February 5, 1943, as the Fleet Rescue and Salvage Vessel USS SHACKLE (ARS–9). The USS SHACKLE (ARS–9) served for two years as a U.S. Navy vessel in defense of the United States, earning three battle stars. The USS SHACKLE's (ARS–9) first station was at Pearl Harbor, Hawaii, serving as a salvage ship in the West Pacific for the remainder of World War II. On August 23, 1946, the USS SHACKLE (ARS–9) was commissioned into the USCG as USCGC ACUSHNET (WAT–167).

USCGC ACUSHNET (WMEC–167) is the second oldest medium endurance vessel in the fleet (the oldest being the USCGC STORIS (WMEC–38)). After more than 60 years of continuous service, USCGC STORIS (WMEC–38) and USCGC ACUSHNET (WMEC–167) have become increasingly costly to support. Excessive maintenance problems stemming from the age of the vessels result in reduced reliability and increased operating costs. The vessels have reached the end of their service lives. The USCG intends to decommission and then to report both vessels as excess personal property to the U.S. General Services Administration (GSA), an independent Federal agency responsible for property management and utilization government-wide. Ultimately, the vessels may be disposed through either the GSA personal property disposal process or another statutorily authorized personal property disposal process.

Possible disposal outcomes include, but are not limited to, transfer of one or both vessels to another Federal agency, conveyance to a State or local government or other non-Federal entity, transfer to a foreign government, or scrapping.

The EA will address the potential environmental impacts of the vessels' decommissioning and disposal. The EA will consider the various alternatives to the proposed action, including but not limited to, keeping the vessels in a commissioned status (*i.e.*, the "no action" alternative) or disposal of the vessels through the GSA or other disposal process. The EA will also address potential impacts of connected actions, including replacement of the USCGC STORIS (WMEC–38) and USCGC ACUSHNET (WMEC–167).

You can address any questions about the proposed action or the EA to the USCG representative identified in **FOR FURTHER INFORMATION CONTACT**.

After receiving public comments, the USCG will prepare an EA and we will publish a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the USCG representative identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the EA.

Wayne E. Justice,

RDML, U.S. Coast Guard, Director of Enforcement and Incident Management.

[FR Doc. E6–7864 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24796]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Vessel Inspection Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to these specific issues of towing safety. The meetings will be open to the public.

DATES: The Towing Vessel Inspection Working Group will meet on Wednesday, July 19, 2006 from 9 a.m. to 4:30 p.m. and on Thursday, July 20, 2006 from 8:30 a.m. to 1 p.m. The 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 July 7, 2006. Requests to have a

copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before July 7, 2006.

ADDRESSES: The Working Group will meet at the Holiday Inn Rosslyn @ Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. Please bring a government-issued ID with photo (*e.g.* driver's license). Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–PSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2006–24796.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–372–1401, fax 202–372–1926, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat.770, as amended).

Agenda of Working Group Meetings: The agenda for the Towing Vessel Inspection Working Group tentatively includes the following items:

(1) What level of detail for electrical, propulsion and steering systems should be included in a Title 46, Code of Federal Regulations subchapter devoted to the inspection and certification of towing vessels?

(2) Should standards differ for small vessels including; towing vessels under 26 feet, small workboats/tenders not engaged in commercial towing for hire; and assistance towing vessels?

(3) What are the potential conflicts of interest relative to auditor duties?

(4) Identify and clarify possible definitions of geographical applicability terms used throughout the TSAC report.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in **FOR FURTHER INFORMATION CONTACT**) no later than July 7, 2006. Written material for distribution at the meeting should reach the Coast Guard no later than July 7, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: May 15 2006.

L.W. Thomas III,

Acting Director of Standards, Assistant Commandant for Prevention.

[FR Doc. E6–7860 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: TSA Claims Management System

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 11, 2006, 71 FR 1763.

DATES: Send your comments by June 23, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Attorney-Advisor, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), 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 OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Claims Management System.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): Supplemental Information Form, Payment Form.

Affected Public: Members of the traveling public who believe they have experienced property loss or damage, a personal injury, or other damages due to the negligence or wrongful act or omission of a TSA employee, and decide to file a Federal tort claim against TSA.

Abstract: TSA needs to collect certain information, in addition to that collected on the Standard Form 95, from claimants in order to investigate claims properly. TSA is seeking approval for its two supplemental forms, as well as the electronic claims management system currently in development, which will ease the burden on claimants and streamline the claims process. TSA will use the data collected from claimants to investigate and analyze tort claims against the agency to determine alleged TSA liability and to reimburse claimants when claims are approved. For more information, please see TSA's Claims Management Office Internet Web site at *http://www.tsaclaims.org.*

Number of Respondents: 24,000. The number of respondents (28,800) TSA estimated in its January 11 notice was a high estimate and, after further evaluation, TSA believes this figure is a much closer estimate.

Estimated Annual Burden Hours: 6,400. In light of the reduction in the number of estimated annual respondents, TSA has also made a corresponding reduction in the estimated annual burden hours reported in its January 11 notice.

Issued in Arlington, Virginia, on May 17, 2006.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. E6–7904 Filed 5–23–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2390–06]

RIN 1615–ZA36

Extension of the Designation of Temporary Protected Status for Nicaragua; Automatic Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of correction.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is correcting a notice that was published in the **Federal Register** on May 19, 2006 (71 FR 29166) which intended to correct a notice that was published in the **Federal Register** on March 31, 2006 (71 FR 16333) announcing the extension of the Temporary Protected Status (TPS) designation for Nicaragua.

The USCIS published a notice in the **Federal Register** on May 19, 2006 (71 FR 29166) that corrected the end date of the 60-day re-registration period. The correction notice published on May 19, 2006 inadvertently identified the end date for re-registration as June 30, 2006. The correct end date for the re-registration period is June 1, 2006. This notice corrects the end date to be June 1, 2006.

DATES: This correction is effective May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd floor, Washington, DC 20529, telephone (202) 272–8350.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on (71 FR 29166), the correction document contains an error that is in need of correction.

Correction of Publication

The document that was published on March 31, 2006 (71 FR 16333) that was the subject of FR Doc. E6–4686, was corrected by the publication of a document published on May 19, 2006 (71 FR 29166) that was the subject of FR Doc. E6–7686. Accordingly, this notice further corrects the document that was published on May 19, 2006 as follows:

1. On page 16333, in the third column, in the sixth line under "Effective Dates' date "June 30, 2007" is corrected to read: "June 1, 2006".

Dated: May 19, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–4842 Filed 5–19–06; 5:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact for Hagerman National Wildlife Refuge (Refuge), Sherman, TX

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Final CCP is available for the Hagerman National Wildlife Refuge (Refuge). This CCP is prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and describes how the Service intends to manage this Refuge over the next 15 years.

ADDRESSES: Copies of the CCP are available on compact diskette or in hard copy, and can be obtained by writing: U.S. Fish and Wildlife Service, Attn: Yvette Truitt-Ortiz, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Johnny Beall, Refuge Manager, Hagerman National Wildlife Refuge, 6465 Refuge Road, Sherman, Texas 75092; 903–786–2826, or Yvette Truitt-Ortiz, Natural Resource Planner, U.S. Fish and Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico 87103; 505–248–6452; or direct e-mail to *yvette_truittortiz@fws.gov.*

SUPPLEMENTARY INFORMATION: A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*). The purpose in developing CCPs 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 science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: March 31, 2006.

Geoffrey L. Haskett,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E6–8003 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: We must receive written data or comments on these applications at the address given below, by June 23, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. This notice is provided under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Department of Natural and Environmental Resources, Miquel A. Garcia, Cupey, Puerto Rico, TE125521–0.

The applicant requests authorization to take (examine, treat medically, release, monitor) the Puerto Rican parrot (*Amazona vittata*) while holding in captivity for rearing, performing captive rearing techniques, and re-establishing wild populations. The proposed activities would occur in the Rio Abajo Commonwealth Forest and the Abajo State Forest, Arecibo, Puerto Rico.

Applicant: Barbara P. Allen, Gulf Shores, Alabama, TE125557–0.

The applicant requests authorization to take (capture, identify, relocate nest, release) the following species: Alabama beach mouse (*Peromyscus polionotus ammobates*), Kemps ridley sea turtle (*Lepidochelys kempii*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), and gopher tortoise (*Gopherus polyphemus*) while conducting presence/absence surveys and nest monitoring activities. The proposed activities would occur in Mobile and Baldwin Counties, Alabama.

Applicant: James Bernard Akins, Jasper, Tennessee, TE125570–0.

The applicant requests authorization to take (capture, identify, release) the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) while conducting presence/absence surveys. The proposed activities would occur at the Russell Cave National Monument, Jackson County, Alabama and Little River Canyon National Preserve, Dekalb County, Alabama.

Applicant: Robert W. Thomas, III, Hendersonville, North Carolina, TE125573–0.

The applicant requests authorization to take (capture, monitor nests, install inserts, band, release) the Red-cockaded woodpecker (*Picoides borealis*) while conducting presence/absence surveys, nest monitoring, artificial cavity creation using boxes and drilled cavities, and banding of juvenile and adult birds. The proposed activities would occur throughout the species range in the states of Georgia, North Carolina, South Carolina, Alabama, and Florida.

Applicant: Ouachita National Forest-Poteau Ranger District, Hot Springs, Arkansas, TE125590–0.

The applicant requests authorization to take (capture, identify, release) the American burying beetle (*Nicrophorus americanus*) while conducting presence/absence studies. The proposed activities would occur throughout the Ouachita National Forest, Arkansas and Oklahoma.

Applicant: Robert W. Thomas, III, Hendersonville, North Carolina, TE125573–0.

The applicant requests authorization to take (capture, monitor nests, install inserts, band, release) the Red-cockaded woodpecker (*Picoides borealis*) while conducting presence/absence surveys, nest monitoring, artificial cavity creation using boxes and drilled cavities, and banding of juvenile and adult birds. The proposed activities would occur throughout the species range in the states of Georgia, North Carolina, South Carolina, Alabama, and Florida.

Applicant: Jane L. Indorf, University of Miami, Coral Gables, Florida, TE125595–0.

The applicant requests authorization to take (capture, identify, collect tissue samples, release) the Rice rat (*Oryzomys palustris natator*) while conducting genetic research. The proposed activities would occur throughout the species range in the state of Florida.

Applicant: Ouachita National Forest, Richard L. Rosemier, Hot Springs, Arkansas, TE125605–0.

The applicant requests authorization to take (capture, identify, band, release) the Indiana bat (*Myotis sodalis*) while monitoring and conducting inventory surveys. The proposed activities would occur throughout the Ouachita National Forest in the states of Arkansas and Oklahoma.

Applicant: Burns & McDonnell Engineering Company, Inc., Brian R. Roh, Kansas City, Missouri, TE125620–0.

The applicant requests authorization to take (capture, identify, release) the American burying beetle (*Nicrophorus americanus*) while conducting presence/absence studies. The proposed activities would occur in Crawford County, Arkansas.

Applicant: USDA Forest Service, National Forest in Alabama, Steve Rickerson, Montgomery, Alabama, TE125740–0.

The applicant requests authorization to take (capture, monitor nests, install inserts, band, translocate, release) the Red-cockaded woodpecker (*Picoides borealis*) while conducting presence/absence surveys, nest monitoring, artificial cavity creation using boxes and drilled cavities, and banding of juvenile and adult birds. The proposed activities would occur throughout the species range in the Talladega National Forest and the Conecuh National Forest, Alabama. Also, translocation, Safe Harbor, and special assignments may occur throughout the species range.

Dated: May 10, 2006.

Noreen E. Walsh,

Acting Regional Director.

[FR Doc. E6–7906 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the San Diego National Wildlife Refuge (Otay-Sweetwater Unit and Vernal Pools Stewardship Project), San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an associated environmental assessment for the San Diego National Wildlife Refuge pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq*), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4370d). The Service is providing this notice to advise other agencies, Tribal Governments, and the public of our intentions, and to obtain suggestions and information on the scope of the issues and alternatives to include in the CPP and the environmental document.

DATES: Written comments should be received at the address below no later than July 15, 2006.

Public scoping meetings will be held as follows:

(1) Wednesday, June 14, 2006—2 to 4 p.m.,,Otay Water District Office, Training Room, 2554 Sweetwater Springs Boulevard, Spring Valley, California

(2) Thursday, June 15, 2006—6:30 p.m. to 8:30 p.m., Jamul Primary School, Multipurpose Room, 14567 Lyons Valley Road, Jamul, California.

ADDRESSES: Please submit comments, questions, and requests for more information regarding the San Diego National Wildlife Refuge CCP or upcoming scoping meetings to: Victoria Touchstone, Refuge Planner, San Diego National Wildlife Refuge Complex, 6010 Hidden Valley Road, Carlsbad, CA 92011; Telephone: 760–431–9440 ext. 349; Fax: 760–930–0256; Electronic mail: *Victoria_Touchstone@fws.gov*. Additional information is also available at *http://sandiegorefuges.fws.gov*, click on Comprehensive Conservation Plans.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended, requires the Service to develop a Comprehensive Conservation Plan (CCP) for each National Wildlife Refuge. The purpose for developing a CCP 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 (Refuge System), consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. The CCP process will involve establishing goals, long-range objectives, and strategies for achieving refuge purposes, developing and evaluating management alternatives, and providing priority consideration for wildlife-dependent recreational uses including hunting, fishing, wildlife observation, photography, environmental education, and interpretation.

The San Diego National Wildlife Refuge (Refuge) was established in 1996 under the authority of the Endangered Species Act of 1973, as amended. The Refuge's approved acquisition boundary, which includes both the Otay-Sweetwater Unit and Vernal Pools Stewardship Project, encompasses approximately 52,080 acres. Approximately 8,280 acres within the acquisition boundary have been acquired by the Service to date. These lands are located at the eastern edge of the San Diego metropolitan area in southwestern San Diego County, generally between northeastern Chula Vista and the communities of Jamul, Dehesa, and Crest.

The primary purposes of the Refuge are to contribute to the recovery of endangered, threatened, and rare species, such as the Quino checkerspot butterfly, California gnatcatcher, and San Diego mesa mint; to support the native biodiversity of the southwestern San Diego Region by contributing to the development of a regional preserve under the San Diego Multiple Species Conservation Program; and to provide opportunities for compatible wildlife-dependent recreation.

The Refuge has not been officially opened for public use, but does provide potential opportunities for wildlife-dependent recreational uses including hunting, fishing, wildlife observation, photography, environmental education, and interpretation. All potential public uses on the Refuge will be evaluated for compatibility with Refuge purposes and the mission of the Refuge System. These Compatibility Determinations will be conducted during the CCP process and a written record of the determination will be provided for public review and comment as an appendix to the future Draft CCP/EA.

Comments and concerns received during this scoping process will be used to help identify key issues, develop goals, establish habitat management and public use strategies, and draft management alternatives. Additional opportunities for public participation will occur throughout the planning process, and details about these opportunities will be provided in special mailings, newspaper articles, and other announcements. Involvement and input from interested federal, state, and local agencies, Tribal governments, organizations, and individuals is encouraged. We expect to have the draft CCP/EA completed and made available for public review in summer 2007 and the CCP process completed by 2008.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E6–7911 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force and Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the Fish and Wildlife Service, announce a joint meeting of the Klamath River Basin Fisheries Task Force and Klamath Fishery Management Council. The meeting is open to the public. The purpose of the meeting is to allow affected interests to continue providing recommendations to us on implementation of our program to restore anadromous fisheries, including salmon and steelhead, in the Klamath River in California and Oregon.

DATES: The meeting will be from 9 a.m. to 5 p.m. on June 21, 2006, and from 8 a.m. to 5 p.m. on June 22, 2006.

ADDRESSES: The meeting will be held at the College of the Siskiyous, 2001 Campus Drive, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), we announce a meeting of the Klamath River Fisheries Task Force and Klamath Fishery Management Council. These Federal advisory committees were

established under the Klamath River Basin Fishery Restoration Act (16 U.S.C. 460ss et seq.).

For background information on the Klamath River Basin Fisheries Task Force, please refer to the **Federal Register** notice of the initial meeting (July 8, 1987, 52 FR 25639). For background information on the Council, please refer to the **Federal Register** notice of the initial meeting (July 8, 1987, 52 FR 25639).

Dated: May 18, 2006.

John Engbring,

Acting California/Nevada Operations Manager, California/Nevada Office, Fish and Wildlife Service.

[FR Doc. E6–7910 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Trinity River Restoration Program Fiscal Year 2007 budget; Hoopa Valley and Yurok tribal perspectives; Trinity River Restoration Program emphasis on tributaries and watersheds; science framework; Executive Director's report; reports from Trinity River Restoration Program workgroups; Trinity River Restoration Program strategic plan; TAMWG member presentation; and CVPIA program review. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Thursday, June 15, 2006, and from 8:30 a.m. to 4 p.m. on Friday, June 16, 2006.

ADDRESSES: The meeting will be held at the Trinity County Library, 211 Main St., Weaverville, CA 96093, telephone: (530) 623–1373.

FOR FURTHER INFORMATION CONTACT: Randy A. Brown of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. Randy A. Brown is the working group's Designated Federal Officer.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: May 18, 2006.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E6–7908 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–134–1220–241A]

Notice of Public Meeting, McInnis Canyons National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The newly appointed McInnis Canyons National Conservation Area (MCNCA) Advisory Council will hold its first meeting on June 22, 2006. The meeting will begin at 3:00 p.m. and will be held at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO. Additional meetings for 2006 will be determined at the June 22nd meeting and published in the **Federal Register**.

DATES: The meeting will be held on June 22, 2006.

ADDRESSES: For further information or to provide written comments, please contact the Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; (970) 244–3000.

SUPPLEMENTARY INFORMATION: The Colorado Canyons National Conservation Area was established on October 24, 2000 when the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (the Act) was signed by the President. The Act required that the Advisory Council be established to provide advice in the preparation and implementation of the CCNCA Resource Management Plan. The name was congressionally changed at the end of 2004 from Colorado Canyons National Conservation Area to McInnis Canyons National Conservation Area (MCNCA).

The MCNCA Advisory Council will meet on Thursday, June 22, 2006 at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO, beginning at 3 p.m. The agenda topics for this meeting are:

(1) The election of council officials.

(2) Schedule additional meetings for 2006.

(3) MCNCA Overview and Council Orientation.

(4) Public comment period.

(5) Set Agenda for next meeting.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the MCNCA Advisory Council, can be obtained from the MCNCA Web site at: *http://www.co.blm.gov/mcnca/index.htm.*, which will be updated following each Advisory Council meeting.

Dated: May 18, 2006.

Paul H. Peck,

Manager, McInnis Canyons National Conservation Area.

[FR Doc. E6–7909 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–338–1220–MV]

Establishment of Interim Supplementary Rules on Public Lands Within the King Range National Conservation Area Management Area, Managed by the Arcata Field Office, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Interim Supplementary Rules with request for comments.

SUMMARY: In accordance with the Record of Decision for the King Range National Conservation Area (NCA) Approved Resource Management Plan (RMP), the Bureau of Land Management

(BLM), Arcata Field Office, is issuing interim supplementary rules and requesting comments. These interim supplementary rules will apply to public lands within the King Range National Conservation Area management area, and will be effective upon publication and remain in effect until the publication of final supplementary rules. The BLM has determined these interim supplementary rules are necessary to enhance the safety of visitors, protect natural resources, improve recreation opportunities, and protect public health. These supplementary rules do not propose or implement any land use limitations or restrictions other than those included within the BLM's decisions in the King Range NCA Approved RMP, or allowed under existing law or regulation.

DATES: The interim supplementary rules are effective May 24, 2006. We invite comments until July 24, 2006.

ADDRESSES: Mail or hand deliver all comments concerning the interim supplementary rules to the Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521; or, you may access the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Wick, Planning and Environmental Coordinator, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, 707–825–2321. e-mail: *rwick@ca.blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the interim supplementary rules should be specific, confined to issues pertinent to the interim supplementary rules, and should explain the reason for any recommended change. The Record of Decision for the King Range National Conservation Area (NCA) Resource Management Plan (RMP) was signed on May 11, 2005, and represents the final decision of the Bureau of Land Management Director regarding management of lands within the 68,000 acre management area. Therefore, comments requesting changes to the RMP decisions guiding the development of these interim supplementary rules are outside the scope of this comment period. Where possible, comments should reference the specific section or paragraph of the supplementary rule that the comment is addressing. BLM need not consider or include in the Administrative Record for the final supplementary rule: (a) Comments that BLM receives after the close of the comment period (see **DATES**). unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (See **ADDRESSES**).

You may also access and comment on the interim supplementary rules at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The BLM is establishing these interim supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue supplementary rules of less than national effect without codifying the rules in the Code of Federal Regulations. Rules regarding special recreation permit requirements are established under the authority of 43 CFR part 2930. Specifically, 43 CFR 2932.11 allows BLM to require special recreation permits for non-commercial group use if this requirement is based on management planning decisions. This authority also allows BLM to require permits for individual use of "special areas" upon publication of the requirement in the **Federal Register** and local media. The BLM identified the King Range NCA management area as a special area for this purpose in the King Range NCA RMP.

The supplementary rules are available for inspection in the Arcata Field Office; they are posted at the King Range NCA; and they will be published in a newspaper of general circulation in the affected vicinity. The overall program authority for the operation of this area is found in the King Range Act (Pub. L. 91–476) and sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740). The King Range NCA is located approximately 60 miles southwest of Eureka, Humboldt County, California, within the Humboldt and Mount Diablo Meridians.

BLM finds good cause to publish these supplementary rules on an interim basis, effective the date of publication, because of public health and safety concerns and resource protection needs within the management area. A high amount of visitation occurs in the backcountry portions of the King Range NCA, specifically along the Lost Coast Trail. This has led to overcrowding of backcountry campsites and sanitation problems from large groups camped in a confined area. Also, safety concerns associated with human encounters with bears (due to improperly stored food) led to the establishment of an emergency supplementary rule requiring use of bear canisters. Bear encounters continue to occur among users who do not use the canisters, and this supplementary rule will serve to make the emergency requirement permanent. Several federally-listed threatened and endangered species are located within the area, and a number of the supplementary rules are needed to conserve critical habitat. Supplementary rules specific to Areas of Critical Environmental Concern (ACEC) are intended to protect the relevant and important resource values within these units, including old-growth forests, sensitive watersheds, dune and wetland ecosystems, and cultural sites. All supplementary rules will be effective immediately on an interim basis except for the supplementary rule requiring special recreation permits for individual visitors to the Backcountry Management Zone. This supplementary rule will be implemented upon development of a permit administration/issuance process, but no earlier than May 1, 2006. Specific information regarding how visitors can obtain permits will be announced in regional newspapers, BLM Web sites, and area information kiosks. The permits will serve to improve information dispersal to the public on visitor safety and low impact use requirements. They will also provide visitor use statistics for inclusion in developing a use allocation plan as called for in the King Range RMP.

All of the interim supplementary rules implement management decisions contained in the King Range NCA

Resource Management Plan. The Arcata Field Office has taken the following steps to involve the public in developing the plan decisions that provide a basis for the interim supplementary rules:

Public Scoping: The BLM conducted five public scoping meetings in November 2002. One-hundred-and-twenty-five participants attended the meetings held in Petrolia, Garberville, Shelter Cove, Eureka, and San Francisco. The BLM also issued a press release announcing the scoping period and meetings to all media in northern California. An informational Web site was established, which was maintained throughout the effort to provide background on the planning process, announcing opportunities for public involvement, and highlighting progress on the plan. Other tools used to communicate with interested parties included a "King Range Planning Update" mailer, sent to all members of the King Range mailing list, and fliers posted on community bulletin boards in the rural region surrounding the King Range NCA.

Public Review of the Draft EIS: The draft EIS and RMP were released to the public for a 90-day comment period, ending April 16, 2004. During this review period five public meetings were held to explain the EIS and RMP to the public and to allow comment. Seventy-seven members of the public attended the meetings. Participants were given the opportunity to provide oral comments at the meetings, or to record their input on public comment forms provided by the BLM.

BLM received 862 comments on the draft RMP and EIS from the public through public meetings, electronic letters, and paper letters. Over 350 issues or "public concerns" were identified from these comments. A summary of the issues identified in the public comment letters and BLM's response to these issues is included in Chapter 5 of the Final EIS. Also, letters from organizations and public agencies are reprinted in the document. Copies of letters from individuals are available for review at the BLM Arcata Field Office. A draft of the interim supplementary rules was published as an appendix in the proposed RMP and all decisions related to the supplementary rules were analyzed in the Final EIS.

California Coastal Zone Consistency Review: The BLM presented the Proposed RMP to the California Coastal Commission. The Coastal Commission determined that the RMP, including the decisions that provide a basis for these supplementary rules, was consistent with the California Coastal Management Program.

Governor's Consistency Review: The BLM submitted the Draft RMP to the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (Document # 2004014002). No state agencies commented to the Clearinghouse, and the BLM received a letter of confirmation that the RMP complied with state review requirements on April 16, 2004. No known inconsistencies have been identified, either by the BLM or the Governor, for the RMP decisions. In addition, the California State Lands Commission has granted the BLM a permit to manage motorized use within the intertidal zone of the King Range NCA coastline, as well as the area below mean high water mark within the lower Mattole River and Estuary (where it traverses public lands).

Based on public safety and resource protection concerns, and due to the multiple opportunities for public involvement during development of the RMP decisions that provide a basis for these supplementary rules, the BLM finds good cause to issue these supplementary rules as interim supplementary rules. The public is now invited to provide additional comments on the interim supplementary rules. See the **DATES** and **ADDRESSES** sections for information on submitting comments.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim supplementary rules will not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of a certain National Conservation Area and adjoining lands. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. These interim supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose certain rules on recreational activities on a limited portion of the public lands in California in order to protect human health, safety, and the environment.

Clarity of the Interim Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim supplementary rules clearly stated?

(2) Do the interim supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) air or reduce their clarity?

(4) Would the interim supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim supplementary rules in the **SUPPLMENTARY INFORMATION** section of this preamble helpful in understanding the interim supplementary rules? How could this description be more helpful in making the interim supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These interim supplementary rules themselves do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). However, they are a component of a larger plan (Resource Management Plan) that constitutes a major Federal action. BLM has prepared a draft environmental impact statement/final environmental impact statement (DEIS/FEIS) on the Resource Management Plan which includes a complete analysis of each decision corresponding to the interim supplementary rules. In addition to this analysis, the interim supplementary rules were directly published in the final EIS. These documents are on file and available to the public in the BLM administrative record at the address specified in the **ADDRESSES** section. The Record of Decision has also been completed and is also on file at the specified address.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these interim supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These interim supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). The interim supplementary rules merely contain rules of conduct for recreational use of certain public lands. The interim supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These interim supplementary rules do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor do they have a significant or unique effect on small governments. These interim supplementary rules do not require anything of state, local, or Tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive order.

Executive Order 13132, Federalism

The interim supplementary rules 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. The interim supplementary rules affect land in only one state, California. The BLM manages recreation use of the state-controlled coastal zone (i.e., the strip of beach below mean high tide, and below mean high water mark within the Mattole River Estuary) of the King Range NCA under a permit granted by the California State Lands Commission. This permit is revocable by the state and does not change the distribution of powers or responsibility between the state and Federal governments. Therefore, BLM has determined that these interim supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these interim supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The supplementary rules include rules of conduct and prohibited acts, but they are straightforward and not confusing, and their enforcement should not unreasonably burden the United States Magistrate who will try any persons cited for violating them.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these interim supplementary rules do not include policies that have Tribal implications. The interim supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos. To comply with Executive Orders regarding government-to-government relations with Native Americans, formal and informal contacts were made with the Bear River Band of the Rohnerville Reservation, the Federally-recognized tribal entity for consultation purposes. The tribe was provided with a copy of the draft RMP, and contacted directly by the BLM requesting comments and assessing the need for a tribal briefing. The tribe expressed no concerns about the RMP, or specifically the decisions related to these interim supplementary rules.

Paperwork Reduction Act

These interim supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Rules requiring special recreation permits for certain recreational users will involve collection of information contained on BLM Special Recreation Permit form 2930–1. This permit form has been approved under OMB Number 1004–0119.

Author

The principal author of these interim supplementary rules is Bob Wick, Planning and Environmental Coordinator, Arcata Field Office, Bureau of Land Management.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the California State Director, Bureau of Land Management hereby issues supplementary rules, effective on an interim basis upon publication, for public lands managed by the BLM in the King Range National Conservation Area and adjoining public lands, to read as follows:

Supplementary Rules for the King Range National Conservation Area and Adjoining Public Lands

Sec. 1. Definitions

Backcountry Management Zone—A portion of the management area encompassing approximately 38,833 acres, which is managed under the King Range RMP to protect wilderness characteristics. The Backcountry Management Zone will be delineated on trailhead maps and other visitor information upon institution of the individual special recreation permit program

Camping—The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

Commercial Group—Commercial as defined under 43 CFR 2932.5.

Dispersed use area—Any location outside of a developed campground or away from a motor vehicle access point, where camping visitors cannot store food or other scented items inside a locked vehicle.

Hard sided bear canister—A container made of rigid material of a size and shape that cannot be grasped by the mouth or paws, or otherwise be carried for any significant distance, by bears.

The container must also have a closing and latching lid that is tested and proven effective against bears.

Individual permits—A permit will be required for all individual users who access the Backcountry Management Zone for camping use. This requirement will be instituted upon development of a permit registration and processing system by BLM, but no earlier than May 1, 2006 (*Authority:* 43 CFR 2932.11(b)(1) Special Area Permits).

King Range NCA Management Area—All BLM public lands within the boundaries of the King Range National Conservation Area (NCA), as well as adjoining public lands that were included in the King Range NCA Resource Management Plan planning area. This includes all or portions of the following public land survey sections:

Mount Diablo Meridian, California

T. 24 N., R.19 W, Secs. 4 and 5.

Humboldt Meridian, California

T. 5 S., R.1 E., all sections in township
T. 5 S., R. 2 E., Secs. 5, 6, 7, 19, 30, 31, and 32.
T. 4 S., R.1 W., all sections in township.
T. 4 S., R.1 E., Sections 4, 5 through 9, and 15 through 36.
T. 4 S., R.2 E., Sec. 31.
T. 3 S., R.2 W., Secs. 12 through 16 and 22 through 25.
T. 3 S., R.1 W., Secs. 8, 9, and 12 through 36.
T. 3 S., R.1 E., Secs. 6, 7, 18, 19, and 29 through 32.
T. 2 S., R.2 W., Secs. 4 through 6, 8 through 10, 14 through 23, and 26 through 35
T. 2 S., R.3 W., Secs. 12, 13, 24, 25, and 36.

All references to the "management area" in this document refer to the public lands described above.

Mattole ACEC—A sub-unit of the management area comprised of BLM lands within all or portions of the following public land survey sections:

Humboldt Meridian, California

T. 2 S., R. 2 W., Secs. 17, 18, 31
T. 2 S., R. 3 W., Secs. 12, 13, 24, 25, 36
T. 3 S., R. 2 W., Sec. 6.

Mill Creek ACEC—A sub-unit of the management area comprised of all BLM lands within the Mill Creek watershed including all or portions of the following public land survey sections:

Humboldt Meridian, California

T. 2 S., R. 2 W., Secs. 15, 16, 21, 22, and 28.

Non-commercial organized group—A group that does not meet the definition of commercial under 43 CFR 2932.5. This includes such groups as outdoor clubs, scouts, fraternal organizations and other organizations and group outings where fees paid by participants are limited to a sharing of group expenses. No paid guides accompany the group, and participant fees do not offset other costs of running the organization.

Sierra Interagency Black Bear Group—This group is comprised of Federal agency wildlife biologists and recreation managers from National Parks and National Forests of the Sierra Nevada, where bear/human interface problems are similar to those in the King Range NCA. Their efforts include development and adoption of uniform testing standards and approval protocols for bear-resistant food storage containers. Information on approved canisters can be found at *http://www.sierrawildbear.net/*, or by contacting the King Range NCA Office at (707) 986–5400.

Sec. 2 Supplementary Rules of Conduct

The following rules apply to all visitors unless explicitly stated otherwise in a particular rule. Employees and agents of the BLM will be exempt from these rules during performance of specific official duties as authorized by the Arcata Field Manager.

a. The Following Supplementary Rules Apply to the Lands Within the Mill Creek ACEC Only

1. The area is open to day-use only from one hour before sunrise to one hour after sunset. Camping is not permitted.

2. Campfires are not permitted.

3. Dogs must be on a leash at all times.

b. The Following Supplementary Rules Apply to Lands Within the Mattole ACEC Only

1. Public lands north of Lighthouse Road and south of the Mattole River for a distance of one mile inland from the Mattole Campground are closed to camping. Public lands along Mattole Beach for 500 feet north and south of the Mattole Campground boundaries (campground boundaries are denoted by the driftwood log barriers surrounding the campground) are also closed to camping.

2. Firewood collecting is generally not permitted, except that you may collect driftwood for campfire use during a stay within the King Range National Conservation Area management area. Driftwood may only be collected with hand tools/saws. No chainsaws or power saws may be used.

3. Use of watercraft with internal combustion engines, including all inboard and outboard motor boats, jet skis and other personal watercraft, is not permitted within the lower Mattole River and Mattole Estuary, where the river traverses public lands (in T. 2 S. R. 2 W., Sections 16, 17, and 18, and T. 2 S., R. 3 W., Section 13).

c. The Following Supplementary Rules Apply to the Entire King Range National Conservation Area Management Area

(1) *Backcountry Management Zone Group Size:* A maximum of 15 people can enter the Backcountry Management Zone as a group. For groups using stock animals, up to 25 people and stock animals in combination can enter the area. However, no more than 15 of this total can be people.

(2) *Backcountry Management Zone Organized Group and Commercial Use Quotas:* A maximum number of 30 persons per day in groups that are organized or commercial or both will be allowed to travel into the Backcountry Management Zone from any one trailhead. This use will be allocated on a first come first serve basis as directed in the special recreation permit stipulations.

(3) *Bear Canisters:* All dispersed use area visitors who are camping are required to carry and use hard-sided bearproof food storage canisters. Canisters must be models approved by the Sierra Interagency Black Bear Group. Information on approved models is available from the BLM. The canisters must be of sufficient size to permit storage of all food, toiletries, sunscreen, surfboard wax, insect repellant, and other scented items for the duration of the trip. Each person must possess a minimum of one canister, and must use the canister to store the above types of items, plus any food scraps and scented trash items such as empty cans, energy bar/candy wrappers, surf wax wrappers, etc. Persons who use pack animals must also use Sierra Interagency Black Bear Group-approved canisters or panniers. These must be of sufficient size to store materials for all party members for the duration of the trip. The requirement to use bear canisters does not apply to camping use within designated campgrounds or camping near vehicles where food can be stored and locked inside the vehicle.

(4) *Competitive uses:* Competitive uses as defined in 43 CFR 2932.5 (1) and (2) will not be permitted within the Backcountry Management Zone.

(5) *Motorized Watercraft Landings:* Shore landing of motorized watercraft, including boats, zodiacs, jet skis, and other craft powered with internal combustion engines, is prohibited within the Backcountry Management Zone, except in emergencies. This requirement does not affect offshore anchorages where the watercraft floats freely on the water surface and does not

rest on the shoreline or the adjoining ocean bottom.

(6) *Non-commercial Organized Group Special Recreation Permits:* A special recreation permit is required for all organized groups accessing the management area. (*Authority:* 43 CFR 2932.11(b)(2) and (3) (i–iii)).

Sec. 3 Penalties

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7; 43 CFR 2932.57(b). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. You may also be subject to civil action for unauthorized use of the public lands for violations of special recreation permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit, 43 CFR 2932.57(b)(2).

J. Anthony Danne,

Acting State Director.

[FR Doc. E6–7404 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP06–0113]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands was officially filed in the Oregon State Office, Portland, Oregon, on January 31, 2006.

Willamette Meridian

Oregon

T. 30 S., R. 11 W., accepted November 28, 2005
T. 30 S., R. 9 W., accepted November 28, 2005
T. 23 S., R. 9 W., accepted November 28, 2005
T. 21 S., R. 29 E., accepted December 6, 2005
T. 1 S., R. 6 W., accepted December 6, 2005
T. 6 S., R. 45 E., accepted December 6, 2005
Tps. 9 & 10 S., R. 20 E., accepted December 6, 2005
T. 13 S., R. 7 W., accepted December 6, 2005
T. 14 S., R. 7 W., accepted December 6, 2005

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on February 17, 2006.

Willamette Meridian

Oregon

T. 29 S., R. 8 W., accepted January 6, 2006
T. 3 S., R. 5 W., accepted January 6, 2006
T. 7 S., 8 W., accepted January 6, 2006
T. 20 S., R. 28 E., accepted January 13, 2006

Willamette Meridian

Washington

T. 34 N., R. 29 E., accepted December 6, 2005

The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Washington

T. 19 N., Rs. 2 & 3 E., accepted April 18, 2006

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 S.W. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 11, 2006.

Robert D. DeViney, Jr.,

Branch of Lands and Minerals Resources.

[FR Doc. E6–7922 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES–06–09]

Platte River Recovery Implementation Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service (Service) as joint lead agencies have prepared a final programmatic environmental impact statement (FEIS) for the Platte River Recovery Implementation Program (Program). This FEIS also serves as the Biological Assessment necessary for consultation under section 7 of the Endangered Species Act (ESA). In 1997, the States of Nebraska, Wyoming, and Colorado and the U.S. Department of the Interior (Interior) signed a *Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska (Cooperative Agreement).* In this document, the signatories agreed to pursue a basinwide, cooperative approach to improve and maintain habitat for four threatened and endangered species which use the Platte River in Nebraska: whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), and pallid sturgeon (*Scaphirhynchus albus*). This Program will provide ESA compliance for Service and Reclamation water projects in the Platte River Basin for the four target species, as well as for other participating projects which require Federal permits.

DATES: Interior will not make a decision on the proposed action until at least 30 days after release of the Final EIS. After the 30-day waiting period, a Record of Decision (ROD) will be completed. The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Written comments on, or requests for copies of, the FEIS should be addressed to Platte River EIS Office (PL–100), PO Box 25007, Denver, Colorado, 80225–0007; telephone: (303) 445–2096, or by sending an e-mail request to *platte@prs.usbr.gov.* The document is available on the Internet at *http://www.platteriver.org.* Copies of the FEIS are also available for public inspection at the locations listed under the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Joy Knipps, Platte River EIS Office at the above address, or by telephone at (303) 445–2108, or e-mail at *jknipps@prs.usbr.gov.*

SUPPLEMENTARY INFORMATION: Reclamation and the Service have prepared this FEIS to analyze the impacts of the First Increment (13 years) of the proposed Program, developed jointly by the States of Nebraska, Wyoming, and Colorado, water users, environmental organizations and the Department, to benefit the target species and their habitat in the Platte River Basin and to provide compliance with the ESA for certain historic and future water uses in each State. The habitat objectives of the proposed Program include: improving flows in the Central Platte River through water re-regulation and conservation/supply projects; and protecting, restoring, and maintaining at least 10,000 acres of habitat in and along the Central Platte River area between Lexington and Chapman, Nebraska.

A draft EIS was released for public review and comment January 23, 2004. The comment period ended September 20, 2004. All public comments have been addressed in the FEIS.

The FEIS analyzes the impacts of four alternatives to implement the Program. One alternative, the Governance Committee Alternative, has been selected as the Department's preferred alternative. The programmatic FEIS focuses on impacts that the Program may have on hydrology, water quality, land, target species and their habitat, other species, hydropower, recreation, economics, and social and cultural resources. Subsequent NEPA and ESA documents required for implementation of specific Program actions will be tiered off of this document.

FEIS available for public inspection at the following locations:

- Bureau of Reclamation, Public Affairs Office, 1849 C Street, NW., Washington, DC 20240.
- Bureau of Reclamation, Platte River EIS Office, 44 Union Boulevard, Suite 100, Lakewood, CO 80228.
- Bureau of Reclamation, Great Plains Regional Office, 316 North 26th Street, Billings, MT 59101.
- Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537–9711.
- U.S. Fish and Wildlife Service, 203 W. 2nd Street, Grand Island, NE 68801.
- U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001.

Libraries:

- Omaha Public Library, 215 South 15th Street, Omaha, NE 68102.
- Scottsbluff Public Library, 1809 Third Avenue, Scottsbluff, NE 69361.
- University of Nebraska at Kearney, Calvin T. Ryan Library, 2508 11th Avenue, Kearney, NE 68849–2240.
- University of Nebraska at Lincoln, Love Memorial Library, 13th and R Streets, Lincoln, NE 68588–4100.
- Grand Island Public Library, 211 North Washington Street, Grand Island, NE 68801.
- North Platte Public Library, 120 West 4th Street, North Platte, NE 69101.
- Goodall City Library, 203 West A Street, Ogallala, NE 69153.
- Natrona County Public Library, 307 East 2nd Street, Casper, WY 82601.
- Wyoming State Library, 2301 Capitol Avenue, Cheyenne, WY 82002–0002.
- University of Wyoming, George W. Hopper Law Library, 16th and Gibbon Streets, Laramie, WY 82071–3035.
- Goshen County Library, 2001 East A Street, Torrington, WY 82240.
- Carbon County Government Public Library, Rawlins, WY 82301.
- Central Wyoming College Library, 2660 Peck Avenue, Riverton, WY 82501–2273.
- University of Colorado, Boulder, Norlin Library, 1720 Pleasant Street, Boulder, CO 80309–0184.
- Denver Public Library, 10 West 14th Avenue Parkway, Denver, CO 80204–2731.
- Colorado State University, William E. Morgan Library, Fort Collins, CO 80523–1019.
- University of Northern Colorado, James A. Michener Library, 501 20th Street, Greeley, CO 80639–0091.
- Jefferson County Public Library, Lakewood Library, 10200 West 20th Avenue, Lakewood CO 80215–1402.
- Julesburg Public Library, 320 Cedar Street, Julesburg, CO 80737–1545.
- Sterling Public Library, 420 North 5th Street, Sterling, CO 80751–0400.
- Loveland Public Library, 300 North Adams, Loveland, CO 80537–5754.
- Fort Morgan Public Library, 414 Main Street, Fort Morgan, CO 80701–2209.
- Garfield County Public Library, 413 9th Street, Glenwood Springs, CO 81601–3607.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identity from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: May 18, 2006.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E6–7903 Filed 5–23–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session.

The notification should contain the requester's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requester will ordinarily be allowed no more than 15 minutes to present a topic.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 22–23, 2006.

ADDRESSES: The meeting will take place at the Millennium Hotel Cincinnati, 150 West Fifth Street, Cincinnati, Ohio, (513) 352–2144.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Rebecca S. Durrett, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2617, facsimile (304) 625–5090.

Dated: May 1, 2006.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 06–4794 Filed 5–23–06; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,958]

Alcan Global Pharmaceutical Packaging, Inc.; Plastics Americas Division; Centralia, IL; 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 Alcan Global Pharmaceutical Packaging, Inc., Plastics Americas Division, Centralia, Illinois. 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–58,958; Alcan Global Pharmaceutical Packaging, Inc., Plastics Americas Division Centralia, Illinois (May 12, 2006)

Signed at Washington, DC this 15th day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–7948 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,314]

Anritsu Instruments Company (Formerly Nettest), Utica, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2006 in response to a worker petition filed by a company official on behalf of workers of Anritsu Instruments Company, (Formerly Nettest), Utica, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7936 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,867]

Capital City Press, Inc., Publication Services Division, Barre, VT; Notice of Revised Determination on Remand

On April 11, 2006, the United States Court of International Trade (USCIT) granted a consent motion for voluntary remand in *Former Employees of Capital City Press, Inc.* v. *U.S. Secretary of Labor*, Court No. 06–00081.

On August 31, 2005, a company official filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) with the U.S. Department of Labor (Department) on behalf of workers at Capital City Press, Inc., Publication Services Division, Barre, Vermont (subject firm). The company official stated that the subject firm was shifting production of scientific journals and books to the Philippines and India and importing those products from those countries.

The initial investigation revealed that the workers created documents electronically and that the subject firm imported the publications in an electronic format. The Department determined that the workers did not produce an article within the meaning of Section 222 of the Trade Act. The determination was issued on October 21, 2005. On November 9, 2005, the Department's Notice of negative determination was published in the **Federal Register** (70 FR 68099).

By letters dating November 22, 2005 and December 5, 2005, the subject firm and Local One-L, Graphic Communications Conference, International Brotherhood of Teamsters, (Union), respectively, requested administrative reconsideration of the Department's negative determination regarding eligibility for the subject workers to apply for TAA and ATAA.

The Department's Notice of Dismissal of Application for Reconsideration was issued on January 10, 2006, and published in the **Federal Register** on January 17, 2006 (71 FR 2566). The Department determined that the electronic nature of the publications created by the workers and brought into the United States by the subject firm barred the subject workers for consideration as production workers.

Since the publication of the Notice of Dismissal of Application for Reconsideration applicable to workers and former workers of the subject firm, the Department has revised its policy to acknowledge that there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Intangible goods that would have been considered articles, for the purposes of the Trade Act, if embodied in a physical medium are now considered to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Trade Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. Because the revised policy may have implications beyond this case of which the Department is not fully cognizant, it will be further developed in rulemaking.

Therefore, due to the Department's policy change, the Department requested the voluntary remand to conduct an investigation to determine whether the subject workers are eligible to apply for TAA and ATAA.

Reviewing previously-submitted information through the lens of the revised policy, the Department has determined that, for purposes of the Trade Act, the subject workers are engaged in activity related to the production of an article (scientific journals and books). The Department has also determined that during the relevant period, a significant portion of workers was separated from the subject facility, production shifted abroad, and the subject firm increased its imports of publications following the shift abroad.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for 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 generated through the second remand investigation, I determine that a shift in production abroad of publications like or directly competitive to that produced at the subject facilities followed by increased imports contributed to the total or partial separation of a significant number or proportion of workers at the subject facilities. In accordance with the provisions of the Act, I make the following certification:

All workers of Capital City Press, Inc., Publication Services Division, Barre, Vermont, who became totally or partially separated from employment on or after August 31, 2004, through two years from the issuance of this revised determination, are eligible to apply for Trade 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, as amended.

Signed at Washington, DC, this 12th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7935 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,629]

Consolidated Container Company Beverage and Industrial Container Division, Leetsdale, PA; Notice of Revised Determination on Reconsideration

By application of March 13, 2006, the United Electrical, Radio & Machine Workers of America, Local 690 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 15, 2006, was based on the finding that imports of polycarbonate bottles did not contribute importantly to worker separations at the subject plant and that there was no shift to a foreign country. The denial notice was published in the **Federal Register** on March 10, 2006 (71 FR 12396).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review of the information and a contact with the company official, it was revealed that the subject firm shifted two production lines of the polycarbonate bottles to Canada during the relevant period and that this shift contributed to the layoffs at the subject firm.

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 there was a shift in production from the workers' firm or subdivision to Canada of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Consolidated Container Company, Beverage & Industrial Container Division, Leetsdale, Pennsylvania who became totally or partially separated from employment on or after January 11, 2005 through two years from the date of 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 in Washington, DC this 12th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7938 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,176]

East Palestine China Company, East Palestine, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 10, 2006 in response to a worker petition filed by a company official on behalf of workers at East Palestine China Company, East Palestine, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7945 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of May 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision

have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,064; Gerber Legendary Blades, Fiskars Brands, Your Best Resource, Portland, OR: March 16, 2005

TA–W–59,095; Burlington House Finishing Plant, Burlington, NC: March 27, 2005

TA–W–59,130; Bari-Jay Fashions Inc., New York, NY: March 17, 2005

TA–W–59,146; NTN—BCA Corporation, Lititz, PA: June 12, 2005

TA–W–59,236; Delta Creative, Inc., Delta Technical Coatings, Inc., Select Temp., Whittier, CA: April 14, 2005

TA–W–59,125; Weyerhaeuser Corporation, Elmira Heights, NY: March 28, 2005

TA–W–59,246; Newco Fibre Company, Charlotte, NC: April 5, 2005

TA–W–59,328; Funny-Bunny Incorporated, Doing Business As Cach Cach, Santa Ana, CA: May 3, 2005

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,104; TRW Automotive, Occupant Safety Systems Div., Volt Temp., Cookeville, TN: March 21, 2005

TA–W–59,149; Cole Hersee Co., So. Boston, MA: April 4, 2005

TA–W–59,179; Solo Cup Operating Group, Hoffmaster Division, Glens Falls, NY: March 23, 2005

TA–W–59,220; First Choice Staffing Inc., Working On-Site at ITT, MFC Electronic, Santa Ana, CA: April 14, 2005

TA–W–59,232; Superior Uniform Group Inc., McGehee Industries Div., McGehee, AR: April 17, 2005

TA–W–59,305; PDS Technical Services Inc., On-Site at Carrier Corp, Morrison, TN: April 24, 2005

TA–W–59,195; Photronics, Inc., Milpitas, CA: April 11, 2005

TA–W–59,109; Fuji Photo Film, Inc., Plant F and Plant N, Staff Source, Inc., Greenwood, SC: March 28, 2005

TA–W–59,189; Photronics, Inc., Austin, TX: March 31, 2005

TA–W–59,202; Howell Penncraft, Howell, MI: December 1, 2005

TA–W–59,289; Isola Group USA Corporation, Polyclad Technologies Div., Franklin, NH: April 27, 2005

TA–W–59,289A; Isola Group USA Corporation, Polyclad Technologies Div., Franklin, NH: April 27, 2005

TA–W–59,289B; Isola Group USA Corporation, Polyclad Technologies Div., Millbury, MA: April 27, 2005

TA–W–59,363; Moore Wallace, An RR Donnelley Co., Pre-Press Depart, Iowa City, IA: April 28, 2005

The following certification has been issued. The requirement of supplier to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,206; Elmore-Pisgah, Inc., Spindale, NC: April 12, 2005

TA–W–59,161; Danish Silversmith, Cranston, RI: April 5, 2005

The following certification has been issued. The requirement of downstream producer to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–59,206; Elmore-Pisgah, Inc., Spindale, NC: April 12, 2005

TA–W–59,161; Danish Silversmith, Cranston, RI: April 5, 2005

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,740; Jasc Software, Eden Prairie, MN.

TA–W–59,112; Volex, Inc., Power Cord Products Div., Clinton, AR.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,975; Nazar Rubber Company, Toledo, OH.

TA–W–59,118; Thomson, Inc., Circleville, OH.

TA–W–59,155; California Cedar Products, McCloud, CA.

TA–W–59,205; Alliance Data, ADS Alliance Data Systems, Inc., Reno, OH.

TA–W–59,225; Cigna Healthcare Service Operations, Columbus, OH.

TA–W–59,300; Philips Medical Systems (Cleveland), Inc., Finance Organization, Highland Heights, OH.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,991; Lear Corporation, Interior Systems Div., Lebanon, VA.

TA–W–59,197; Collins and Aikman Products Co., PO Box 208, Farmville, NC.

TA–W–58,740; Jasc Software, Eden Prairie, MN.

TA–W–59,112; Volex, Inc., Power Cord Products Div., Clinton, AR.

TA–W–58,975; Nazar Rubber Company, Toledo, OH.

TA–W–59,118; Thomson, Inc., Circleville, OH.

TA–W–59,155; California Cedar Products, McCloud, CA.

TA–W–59,205; Alliance Data, ADS Alliance Data Systems, Inc., Reno, OH.

TA–W–59,225; Cigna Healthcare Service Operations, Columbus, OH.

TA–W–59,300; Philips Medical Systems (Cleveland), Inc., Finance Organization, Highland Heights, OH.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,064; Gerber Legendary Blades, Fiskars Brands, Your Best Resource, Portland, OR:

TA–W–59,328; Funny-Bunny Incorporated, Doing Business As Cach Cach, Santa Ana, CA:

TA–W–59,220; First Choice Staffing Inc., Working On-Site at ITT, MFC Electronic, Santa Ana, CA:

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

I hereby certify that the aforementioned determinations were issued during the month of May 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 16, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–7949 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,306]

Liebert Corporation, Irvine, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 1, 2006 in response to a worker petition filed by the Employment Development Department of the State of California on behalf of workers at Liebert Corporation, Irvine, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7946 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,144]

Liu's Garment, Inc.; San Francisco, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 3, 2006 in response to a worker petition filed on behalf of workers at Liu's Garment, Inc., San Francisco, California.

The Department has been unable to locate company officials of the subject firm or other knowledgeable persons to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7947 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,287]

SNC Manufacturing Company, Inc., Oshkosh, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2006, in response to a worker petition filed by a union official on behalf of workers at SNC Manufacturing Company, Inc., Oshkosh, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 8th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7943 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,178]

Zohar Waterworks, LLC, d/b/a Tri Palm International, Columbus, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2006 in response to a worker petition filed by a company official on behalf of workers at Zohar Waterworks, LLC, d/b/a Tri Palm International, Columbus, Ohio.

The petitioning group of workers is covered by an active certification, (TA–W–59,172), which expires on May 4, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 11th day of May, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7940 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of an open ACA meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of an open meeting of the Advisory Committee on Apprenticeship (ACA).

Time and Date: The meeting will begin at approximately 8:30 a.m. on Tuesday, June 27, 2006, and continue until approximately 4:30 p.m. The meeting will reconvene at approximately 8:30 a.m. on Wednesday, June 28, 2006, and adjourn at approximately 12 noon.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Matters To Be Considered

The agenda will focus on the following topics:

- ETA Activity Updates.
- Regulatory Workgroup Update.
- Group Discussion on Regulatory Workgroup Update and Recommendations.
- Public Comment.

Status

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Ms. Kenya Huckaby at (202) 693–3795 no later than Tuesday June 20, 2006, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. Anthony Swoope, Administrator, Office of Apprenticeship, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions should be sent by Tuesday, June 20, 2006, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by June 20, 2006. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 15th day of May 2006.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. E6–7920 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 24, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544 (c), the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. 7385j–2 and 20 CFR 30.510 through 30.520, and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery or waiver of overpayments of benefits to beneficiaries. The OWCP–20 is used by OWCP examiners to ascertain the financial condition of the beneficiary who has been overpaid to determine the present and potential income and assets available for collection proceedings. The questionnaire also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, Black Lung, EEOICPA and FECA would have little basis to decide on collection proceedings. This information collection is currently approved for use through November 30, 2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility under the law to resolve overpayments under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Affected Public: Individuals or households.

Total Respondents: 4,020.

Total Responses: 4,020.

Time per Response: 45–75 minutes, average 1 hour.

Frequency: On occasion.

Estimated Total Burden Hours: 4,020.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,688.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 19, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–7925 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0129(2006)]

Standard on Benzene; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in its Benzene Standard (29 CFR 1910.1028). The Standard protects employees from adverse health effects from occupational exposure to benzene.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by July 24, 2006.

Facsimile and electronic transmission: Your comments must be received by July 24, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0129(2006), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Jamaa Hill at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jamaa Hill, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*,employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the Benzene standard requires

employers to conduct employee exposure monitoring; notify the employees of their benzene exposures; implement a written compliance program; implement medical-surveillance of employees; and provide protection for employees from the adverse health effects associated with exposure to benzene.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) for the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements in the Benzene Standard. The information collection requirements specified in the Benzene Standard protect employees from the adverse health effects that may result from occupational exposure to benzene. The major information collection requirements in the standard include conducting employee exposure monitoring, notifying employees of their benzene exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-surveillance results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Benzene Standard (29 CFR 1910.1028).

Type of Review: Extension of a currently-approved information collection requirement.

Title: Benzene Standard (29 CFR 1910.1028).

OMB Number: 1218–0129.

Affected Public: Business or other for-profits, Federal Government, State, local or tribal governments.

Number of Respondents: 13,498.

Frequency: On occasion.

Total Responses: 265,429.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 4 hours to complete a referral medical examination.

Estimated Total Burden Hours: 125,209.

Estimated Cost (Operation and Maintenance): $8,133,499.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on May 18, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–4823 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0215(2006)]

Personal Protective Equipment (PPE) Standards for Shipyard Employment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements specified by its standards on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by July 24, 2006.

Facsimile and electronic transmission: Your comments must be received by July 24, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0215(2006), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the

Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the "Public Participation" section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 615 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small business, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Part 1915 subpart I specifies several paperwork requirements.[1] The following describe the information collection requirements:

Hazard Assessment and Verification (29 CFR 1915.152(b)). Paragraph (b) requires that the employer assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. If such hazards are present, or likely to be present, the employer must: (1) Select the type of PPE that will protect the affected employee from the hazards identified in the occupational hazard assessment; (2) communicate selection decisions to affected employees; (3) select PPE that properly fits each affected employee; and (4) verify that the required occupational hazard assessment has been performed. The verification document must contain the following information: Occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

Training and Verification (29 CFR 1915.152(e)). Paragraph (e)(1) requires that the employer provide training to each employee who is required to use PPE and paragraph (e)(3) requires retraining under certain circumstances. Paragraph (e)(4) requires that the employer verify that each affected employee has received the PPE training. The verification must contain the following information: Name of each employee trained, the date(s) of training, and the type of training the employee received.

The part 1915 standards on PPE protection for the eyes and face (§ 1915.153), head (§ 1915.155), feet (§ 1915.156), hands and body (§ 1915.157), lifesaving equipment (§ 1915.158), personal fall arrest systems (§ 1915.159), and positioning device systems (§ 1915.160) do not contain any separate information collections requirements.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting OMB to extend their approval of the collection of information requirements contained in the standards on Personal Protective Equipment for Shipyard Employment (29 CFR part 1915, subpart I). The Agency is requesting an increase in burden hours for the existing collection of information requirements from 1,761 to 2,041 (a total increase of 280 hours). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: Extension of currently approved information collection requirements.

Title: Personal Protective Equipment Standards for Shipyard Employment (29 CFR part 1915, subpart I).

OMB Number: 1218–0215.

Affected Public: Business or other-for-profits; Federal Government; State, local, or tribal government.

Number of Respondents: 639.

Frequency: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to maintain training documentation to 5 minutes (.08 hour) to document a hazard reassement.

Estimated Total Burden Hours: 2,041.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) Hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

[1] This Information Collection Request (ICR) does not include burden hours and costs associated with the information collection requirements in the standard on Respiratory Protection (29 CFR 1915.154), which has been addressed in a separate ICR. See OMB Control NO. 1218–0099.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Sececretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on May 18, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–4824 Filed 5–23–06; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 10997, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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; or (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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 7th Street, NW., Room 10235, Washington, DC 20503, and to Catherine Hines, Acting Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *chines@nsf.gov*. 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 703–292–4414.

FOR FURTHER INFORMATION CONTACT: Catherine Hines at (703) 292–4414 or send e-mail to *chines@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF 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 2 information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On March 3, 2006, we published in the **Federal Register** (71 FR 10997) a 60-day notice of our intent to request reinstatement of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending May 2, 2006. One comment came from B. Sachau of Florham Park, NJ, via e-mail on March 9, 2006, in response to an email request received March 3, 2006, for a hard-copy publication for this program, "Report on Evaluation of the National Science Foundation's Informal Science Education Program." Ms. Sachau commented on the "heavy spending" for this program but had no specific suggestions for altering the data collection plans.

Response: NSF believes that because the comment does not contain suggestions for altering the collection of information for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title of Collection: Informal Science Education (ISE) Management Information System.

OMB Control No.: 3145–0158.

1. Abstract

This document has been prepared to support the clearance of a Management Information System for the Informal Science Education (ISE) program. The goals for the program are to encourage and support projects that (1) engage the interest of children and adults in science, technology, engineering, and mathematics (STEM) in daily life so that they develop capabilities; scientific and technological literacy, mathematical competence, problem-solving skills, and the desire to learn; (2) bring together individuals and organizations from the informal and formal education communities, as well as from the private and public sectors, to strengthen STEM education in all settings; and (3) develop and implement innovative strategies that 170 support the development of a socially responsible and informed public, and demonstrate promise of increasing participation of all citizens in STEM.

The ISE Management Information System will be comprised of three web-based surveys, an initial survey that obtains background information about the ISE project, an annual survey, and a final survey. The survey that obtains background information would be completed soon 4 after project grants are awarded (*i.e,* within 45 days), the annual would be completed at the end of each program year, and the final would be completed soon after the ISE grant period has ended (*i.e.,* within 45 days). Through the use of these three surveys, the system will collect data from each ISE-funded project about the project, its grant recipient and partner organizations, participants, activities, deliverables, and impacts. Information from the system will be used by ISE program officers to evaluate the collective impact of the ISE portfolio of funded projects, to monitor project-related activities and projects' progress over time, and to obtain information that can 171 inform the design of future ISE projects.

2. Expected Respondents

The expected respondents are principal investigators of any ISE projects that have been funded since 2004.

3. Burden on the Public

During the first year of data collection, the current year's awardees will be asked to report background data. In addition, in only the first year, awardees from the prior two years will be asked to report baseline data and to submit one annual report. The average annual reporting burden for the baseline and final reports is approximately 40 hours, and the reporting burden for the annual report is approximately 24 hours. The total elements will be 4,560 burden hours for an average number of 150 respondents per year. The burden on the public is negligible because the collection is limited to project participants that have received funding from the ISE program.

Dated: May 18, 2006

Catherine J. Hines,

Acting Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–4799 Filed 5–23–06; 8:45 am]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act; dba NeighborWorks® America; Special Board of Directors Meeting

TIME & DATE: 2 p.m.–4 p.m., Thursday, May 25, 2006.

PLACE: Neighborhood Reinvestment Corporation, dba NeighborWorks® America, 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372; *jbryson@nw.org.*

AGENDA:

I. Call to Order: Chairman Curry.
II. Discussion of Strategic Plan: Ken Wade.
III. Adjournment: Chairman Curry.

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 06–4862 Filed 5–22–06; 1:19 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirements to be submitted

1. *The title of the information collection:* NRC Form 790, "Classification Record".
2. *Current OMB approval number:* NRC Form 790.
3. *How often the collection is required:* On occasion.
4. *Who will be required or asked to report:* NRC licensees, contractors, and certificate holder who classifies and declassifies NRC information.
5. *The estimated number of annual respondents:* 300.
6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 20.
7. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, contractors, and only certificate holder who classifies and declassifies NRC information in accordance with Executive Order 12958, as amended, "Classified National Security Information," the Atomic Energy Act, and implementing directives.

Submit, by July 24, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 16th day of May 2006.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E6–7867 Filed 5–23–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of May 22, 29; June 5, 12, 19, 26, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 22, 2006

Wednesday, May 24, 2006

9:30 a.m. Discussion of Security Issues (Closed—Ex.1).

1:30 p.m. All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, Salons D–H, 5701 Marinelli Road, Rockville, MD 20852.

Thursday, May 25, 2006

9:50 a.m. Affirmation Session (Public Meeting) Tentative.

a. Andrew Siemaszko, Docket No. IA–05–021, Unpublished Licensing Board Order (Dec. 22, 2005) (Tentative).
b. Final Rule: National Source Tracking of Sealed Sources (RIN 3150–AH48) (Tentative).
c. Immediately Effective Final Rule—10 CFR 73.57a "Relief From Fingerprinting and Criminal History Records Check for Designated Categories of Individuals" (Tentative).

Week of May 29, 2006—Tentative

Wednesday, May 31, 2006

1 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of June 5, 2006—Tentative

Wednesday, June 7, 2006

9 a.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of June 12, 2006—Tentative

There are no meetings scheduled for the week of June 12, 2006.

Week of June 19, 2006—Tentative

There are no meetings scheduled for the week of June 19, 2006.

Week of June 26, 2006—Tentative

There are no meetings scheduled for the week of June 26, 2006.

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.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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: May 18, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–4853 Filed 5–22–06; 10:07 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of three (3) standard forms: The SF–270, Request for Advance or Reimbursement; SF–271, Outlay and Request for Reimbursement for Construction Programs; and SF–LLL, Disclosure of Lobbying Activities.

DATES: Comments must be submitted on or before July 24, 2006. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: *ephillip@omb.eop.gov*. Please include "Grant Forms" in the subject line and the full body of your comments in the text of the electronic message (and as an attachment if you wish). Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/omb/grants*).

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No.: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, local governments, universities, non-profit organizations.

Number of Responses: 100,000.

Estimated Time per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance payment methods are not used. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No.: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, local governments, universities, non-profit organizations.

Number of Responses: 40,000.

Estimated Time per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0046.

Title: Disclosure of Lobbying Activities.

Form No.: SF–LLL.

Type of Review: Extension of a currently approved collection.

Respondents: Contractors, states, local governments, universities, non-profit organizations, for-profit organizations, individuals.

Number of Responses: 1,000.

Estimated Time per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment and amended by the Lobbying Disclosure Act of 1995. The Federal awarding agencies use information reported on this form for the award and general management of Federal contracts and assistance program awards.

Office of Management and Budget.

Gil Tran,

Acting Chief, Financial Standards and Grants Branch.

[FR Doc. 06–4809 Filed 5–23–06; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Release No. IC–27323; 812–12354]

ProShares Trust, et al.; Notice of Application

May 18, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Applicants: ProShares Trust ("Trust"), ProShare Advisors LLC ("ProShare Advisors"), and SEI Investments Distribution Company ("Distributor").

Summary of Application: Applicants request an order that would permit: (a) Series of an open-end management investment company to issue shares of limited redeemability; (b) secondary market transactions in the shares of the

series to occur at negotiated prices on the American Stock Exchange LLC ("Amex"), or another national securities exchange as defined in section 2(a)(26) of the Act, or on The NASDAQ Stock Market LLC (each, an "Exchange"); (c) dealers to sell shares of the series of the Trust to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of a series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

Filing Dates: The application was filed on December 5, 2000, and amended on January 7, 2005, June 22, 2005, July 6, 2005, and March 29, 2006.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: ProShares Trust and ProShare Advisors, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814; SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, Julia Kim Gilmer, Branch Chief, at (202) 551–6871, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6820 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust intends to offer multiple series (each series, a "Fund") with different types of investment objectives as further described below. ProShare Advisors is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Each Fund will be advised by ProShare Advisors or an entity controlled by or under common control with ProShare Advisors (each, an "Adviser"). The Adviser may enter into subadvisory agreements with additional investment advisers to act as subadviser to the Trust and any of its series. Any subadviser to the Trust or a Fund will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter for each Fund's shares ("ETS").

2. The Funds will seek daily investment results, before fees and expenses, that: (a) Correspond to the return of various equity securities indices ("Conventional Funds"); (b) provide 125%, 150% or 200% of the return of equity securities indices ("Leveraged Funds"); or (c) move in the opposite direction of the performance of equity securities indices in multiples of 100%, 125%, 150% or 200% ("Inverse Funds"). Of the twelve initial Funds, four will be Leveraged Funds and eight will be Inverse Funds.[1]

[1] The Leveraged Funds will seek to return 200% of the return of the S&P 500 Index, the Nasdaq100 Index, the Dow Jones Industrial Average and the S&P MidCap400 Index. The Inverse Funds will seek to return the inverse, or 200% of the inverse, of the same indices. The Trust may offer additional Funds based on these indices and the following indices (collectively, the "Underlying Indices"): Russell 2000 Index, S&P Small Cap 600 Index, Nasdaq Composite Index, S&P 500 BARRA Value Index, S&P 500 BARRA Growth Index, S&P MidCap400 BARRA Value Index, S&P MidCap 400/BARRA Growth Index, S&P SmallCap 600/Barra Value Index, S&P SmallCap 600/BARRA Growth Index, Dow Jones U.S. Airlines Index, Dow Jones U.S. Banks Index, Dow Jones U.S. Basic Materials Sector Index, Dow Jones U.S. Biotechnology Index, Dow Jones U.S. Composite Internet Index, Dow Jones U.S. Consumer Services Index, Dow Jones U.S. Consumer Goods Index, Dow Jones U.S. Oil & Gas Index, Dow Jones U.S. Financials Index, Dow Jones U.S. Health Care Index, Dow Jones U.S. Industrials Index, Dow Jones U.S. Leisure Goods Index, Dow Jones U.S. Oil Equipment, Services & Distribution Index, Dow Jones U.S. Pharmaceuticals Index, Dow Jones U.S. Precious Metals Index, Dow Jones U.S. Real Estate Index, Dow Jones U.S. Semiconductors Index, Dow Jones U.S. Technology Index, Dow Jones U.S. Telecommunications Index, Dow Jones U.S. Utilities Index, Dow Jones U.S. Mobile Communications Index. No index provider is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a promoter, the Adviser, any sub-adviser to any Fund, or the Distributor.

3. In addition to equity securities, the Funds may invest in short-term debt instruments that meet the definition of "Eligible Security" in rule 2a–7 under the Act ("Money Market Instruments"), and in futures contracts, options, equity caps, collars and floors, swap agreements, forward contracts, and reverse repurchase agreements (collectively, "Financial Instruments") in order to meet their investment objectives. A Conventional Fund will invest 95% or more of its total assets in the equity securities contained in the relevant Underlying Index and may invest up to 5% of its total assets in Financial Instruments and Money Market Instruments. Leveraged Funds will invest 85% or more of their total assets in equity securities contained in the relevant Underlying Index and up to 15% of their total assets in Financial Instruments and Money Market Instruments. The Inverse Funds will only invest in Financial Instruments and Money Market Instruments; they will not invest in equity securities.

4. The Adviser will seek to achieve the investment objectives of the Funds by using a mathematical model that takes into account a variety of specified criteria, the most important of which are: (a) The net assets in each Fund's portfolio at the end of each trading day; (b) the amount of required exposure to the Underlying Index; and (c) the positions in equity securities, Financial Instruments and Money Market Instruments at the beginning of each trading day. On each day that a Fund is open for business ("Business Day") the full portfolio holdings of each Fund will be disclosed on the Web site of the Trust and/or the relevant Exchange. The portfolio holdings information disclosed each Business Day will form the basis for that Fund's net asset value ("NAV") calculation as of 4 p.m. that day and will reflect portfolio trades made on the immediately preceding Business Day. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day.

5. Applicants expect that each Conventional Fund will have an annual tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the performance of its Underlying Index. For the Leveraged Fund and Inverse Funds, applicants expect a daily tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the specified multiple or inverse multiple,

respectively, of the performance of the relevant Underlying Index.

6. Each Fund will issue ETS in aggregations of 25,000 to 50,000 ETS (each, a "Creation Unit"). Applicants expect the price of a Creation Unit to be a minimum of $1 million. Creation Units may be purchased only by or through the Distributor or a party that has entered into a participant agreement with the Distributor (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC") system.

7. Creation Units of Conventional and Leveraged Funds generally will be purchased and redeemed in exchange for an "in-kind" transfer of securities and cash ("In-Kind Payment"). Inverse Funds will generally be purchased and redeemed entirely for cash because of the limited transferability of Financial Instruments.[2] An investor making an In-Kind Payment will be required to transfer to the Trust a "Deposit Basket" consisting of: (a) A basket of equity securities consisting of some or all of the securities in the relevant Underlying Index or equivalent equity securities selected by the Adviser to correspond to the performance of the Underlying Index (the "Deposit List"); and (b) a cash amount equal to the differential, if any, between the market value of the equity securities in the Deposit Basket and the NAV per Creation Unit ("Balancing Amount").[3] An investor purchasing a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.[4] The maximum Transaction Fee and any variations or waivers of the Transaction Fee will be disclosed in the prospectus for ETS ("Prospectus") and the method of determining the Transaction Fees will be disclosed in the Prospectus and/or statement of additional information ("SAI").

8. All orders to purchase Creation Units must be placed on a Business Day with the Distributor. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units and for maintaining records of the orders and acknowledgements of acceptance for orders.

9. Persons purchasing Creation Units from a Fund may hold the ETS or sell some or all of them in the secondary market. Shares of the Funds will be listed on an Exchange and trade in the secondary market in the same manner as other exchange-traded funds. It is expected that one or more Exchange members will act as a specialist or market maker and maintain a market on the listing Exchange for ETS.[5] The price of ETS traded on an Exchange will be based on a current bid/offer market. The initial trading price for each ETS of each Fund will fall in the range of $50 to $250. Transactions involving the sale of ETS in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional and retail investors, arbitrageurs, traders, financial advisors, portfolio managers and other market participants.[6] An Exchange specialist or market maker, in providing for a fair and orderly secondary market for ETS, also may purchase or redeem Creation Units for use in its market-making activities. Applicants expect that the market price of ETS will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at their NAV, which should ensure that the market price of ETS at or close to 4 p.m. stays close to the NAV on that Business Day.

11. ETS will not be individually redeemable. ETS will only be redeemable in Creation Units through the Distributor, which will act as the Trust's agent for redemption. To redeem, an investor must accumulate enough ETS to constitute a Creation Unit. An investor redeeming a Creation Unit of a Conventional or Leveraged Fund generally will receive an "in-kind" payment comprised of equity securities published by the Trust's index receipt agent (the "Redemption List") plus a Balancing Amount equal to the difference between the market value of the equity securities on the Redemption List and the NAV of the ETS being redeemed. Redemptions of Creation Units for Inverse Funds will occur entirely in cash. A redeeming investor will pay a Transaction Fee to offset the transactional expenses associated with redeeming Creation Units.

12. Applicants state that neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a "mutual fund." The term "mutual fund" will not be used in the Prospectus except to compare and contrast the Trust or a Fund with conventional mutual funds. In all marketing materials where the features or methods of obtaining, buying, or selling Creation Units are described or where there is reference to redeemability, applicants will include a prominent statement to the effect that individual ETS are not redeemable except in Creation Units. The same approach will be followed in connection with reports and other communications to shareholders, as well as any other investor education materials issued or circulated in connection with ETS. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of ETS.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any

[2] The Trust may also accept and deliver all-cash payments for the purchase and redemption of Creation Units of any Fund in certain limited circumstances.

[3] On each Business Day, prior to the opening of trading on the New York Stock Exchange, the Trust's index receipt agent will make available the list of the names and the required number of shares of each equity security included in the current Deposit Basket and the Balancing Amount for each Fund. Such Deposit Basket will apply to all purchases of Creation Units until a new Deposit Basket for a Fund is announced. The Amex will disseminate every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association, an amount representing on a per share basis the sum of the current value of the securities on the Deposit List, and the estimated amount of cash and Money Market Instruments held in the portfolio of a Conventional or Leveraged Fund. If such funds hold Financial Instruments, the amount would also include, on a per share basis, the marked-to-market gains or losses of the Financial Instruments held by the Fund. For Inverse Funds, the Amex will disseminate an amount representing, on a per share basis, the estimated amount of cash and Money Market Instruments, and the marked-to-market gains or losses of the Fund's Financial Instruments.

[4] A purchaser permitted to substitute cash for certain securities on the Deposit List may be assessed a higher transaction Fee to cover the cost of purchasing such securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and offer side of the market relating to such securities.

[5] The listing requirements established by The NASDAQ Stock Market LLC require that at least two market makers be registered in ETS in order for the ETS to maintain a listing. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[6] ETS will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding ETS. DTC or its participants will maintain records reflecting the beneficial owners of ETS.

class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because ETS will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue ETS of Funds that are redeemable in Creation Units only. Applicants state that investors may always redeem ETS in Creation Units from the Trust. Applicants further state that because the market price of ETS will be disciplined by arbitrage opportunities, investors should be able to sell ETS in the secondary market at or close to 4 p.m. on a Business Day at prices that do not vary substantially from the NAV on that Business Day.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in ETS will take place at negotiated prices, not at a current offering price described in the Prospectus as required by section 22(d) of the Act, and not at a price based on NAV as required by rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing ETS. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been intended to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting ETS to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in ETS does not involve the Trust's assets and cannot result in dilution of an investment in ETS, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in ETS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of ETS and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling ETS to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

8. Applicants state that secondary market investors will regard ETS in a manner similar to other securities, including closed-end fund shares that are listed, bought and sold on an Exchange. Applicants note that shares of closed-end fund investment companies are sold in the secondary market unaccompanied by a prospectus.

9. Applicants contend that ETS, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because ETS will be exchange-listed, prospective investors will have access to several types of market information about ETS. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day from the relevant Exchange, automated quotation systems, published or other public sources or on-line information services. Applicants expect that the previous day's closing price and volume information for ETS also will be published daily in the financial section of newspapers. In addition, the Trust expects to maintain a We bsite that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the NAV and the reported closing price. The Web site will also include, for each Fund, a calculation of the premium or discount of the reported closing price against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the reported closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing the Trust, the Funds and the ETS. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about ETS that is tailored to meet the needs of investors purchasing ETS in the secondary market.

[7] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases ETS in Creations Units from the Issuer or an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in the Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions on the Securities Act. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent ETS, and sells ETS directly to its customers, or if it chooses to couple the purchase of a supply of new ETS with an active selling effort involving solicitation of secondary market demand for ETS. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with ETS that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that one or more holders of Creation Units could own more than 5% of a Fund, or in excess of 25% of that Fund, and could be deemed affiliated with the Trust or such Fund under section 2(a)(3)(A) or 2(a)(3)(C) of the Act. Also, an Exchange specialist or market maker for ETS of any Fund might accumulate, from time to time, more than 5% or in excess of 25% of that Fund's ETS. Applicants request an exemption from section 17(a) of the Act under sections 6(c) and 17(b) of the Act, to permit persons that are affiliated persons of the Funds solely by virtue of a 5% or 25% ownership interest (or affiliated persons of such affiliated persons that are not otherwise affiliated with the Fund) to purchase and redeem Creation Units through "in-kind" transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit and redemption procedures for "in-kind" purchases and redemptions of Creations Units will be effected in exactly the same manner for all purchases and redemptions. The securities contained in the "in-kind" transactions will be valued in the same manner and according to the same standards as the securities held by the relevant Fund. Therefore, applicants state that "in-kind" purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its ETS. Applicants also believe that "in-kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a series of the Trust not identified herein, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such series, either (a) exemptive relief from the Commission, or (b) a no-action letter from the Division of Investment Management of the Commission.

2. The Prospectus and the Product Description will clearly disclose that, for purposes of the Act, ETS are issued by the Funds and that the acquisition of ETS by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. As long as the Trust operates in reliance on the requested order, the ETS will be listed on an Exchange.

4. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. The Prospectus will prominently disclose that ETS are not individually redeemable shares and will disclose that the owners of the ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that ETS are not individually redeemable and that owners of ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only.

5. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule or an amendment thereto, requiring Exchange members and member organizations effecting transactions in ETS to deliver a Product Description to purchasers of ETS.

6. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per ETS basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the Fund, if shorter). In addition, the Product Description for each Fund will state that the Trust's Web site has information about the premiums and discounts at which the ETS have traded.

7. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years (or the life of the Fund, if shorter); and (b) the following data, calculated on a per ETS basis for one, five and ten year periods (or life of the Fund, if shorter), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7913 Filed 5–23–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27324; 812–13280]

WisdomTree Investments, Inc. et al.; Notice of Application

May 18, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an

exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order granting relief ("ETF Relief") to permit (a) open-end management investment companies, the series of which consist of the component securities of certain domestic and international equity securities indexes, to issue shares ("Shares") that can be redeemed only in large aggregations ("Creation Units"), (b) secondary market transactions in Shares to occur at negotiated prices on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange"), (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"), (d) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of a Creation Unit for redemption, and (e) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units. Applicants request that the order also grant relief ("12(d)(1) Relief") to permit certain registered management investment companies and unit investment trusts ("UITs") outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: WisdomTree Investments, Inc. ("WTI"), WisdomTree Asset Management, Inc. ("WTA" or "Advisor"), and WisdomTree Trust ("Trust").

FILING DATES: The application was filed on April 19, 2006, and amended on May 8, 2006. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 48 Wall Street, Suite 1100, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815, or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end series management investment company. Applicants currently intend to introduce 20 series ("Initial Funds") of the Trust and may establish additional series in the future ("Future Funds," and together with the Initial Funds, "Funds").[1] The Advisor, a subsidiary of WTI, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as the investment adviser to each Fund.[2] Each Fund may also be subadvised by a separate investment adviser within the meaning of section 2(a)(20)(B) of the Act that is not otherwise an affiliated person of the Advisor or the Funds and is registered as an investment adviser under the Advisers Act ("Subadvisor").[3] ALPS Distributors, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as principal underwriter for the Funds ("Distributor").

2. Certain Funds ("Domestic Funds") will invest in a portfolio of equity securities ("Portfolio Securities") selected to correspond generally to the price and yield performance of a specified domestic equity securities index ("Domestic Index"), while other Funds ("International Funds") will invest in Portfolio Securities selected to correspond generally to the price and yield performance of an international equity securities index ("International Index," and together with Domestic Indexes, "Indexes").[4] The Indexes are based on a proprietary, rules-based methodology developed by WTI to define the dividend-paying segments of the domestic and international markets ("Methodology"). The Methodology, including the rules which govern the inclusion and weighting of securities in the Indexes, will be publicly available, including on the Funds' Web site ("Web site"), along with the identities and weightings of the component securities of each Index ("Component Securities") and the Portfolio Securities of each Fund.[5] While WTI may change the rules of the Methodology in the future, WTI does not intend to do so. Any change to the Methodology would not take effect until WTI had given the public at least 60 days advance notice of the change and had given reasonable notice of the change to the Calculation Agent. The "Calculation Agent" is the entity that, pursuant to an agreement with WTI, is solely responsible for all Index calculation, maintenance, dissemination and reconstitution activities.[6] The Calculation Agent is not, and will not be, an affiliated person, or an affiliated person of an affiliated person, of the Funds, Advisor, Subadvisor, Distributor or promoter of the Funds.[7]

3. Applicants state that the Index Provider will not have any responsibility for the management of the Funds. In addition, applicants have adopted policies and procedures that, among other things, are designed to limit or prohibit communications between the Index Provider and other employees of WTI and WTA ("Firewalls"). Among other things, the Firewalls prohibit the Index Provider from disseminating non-public information about the Indexes,

[1] All parties that currently intend to rely on the requested order are named as applicants. Any other party that relies on the order in the future will comply with the terms and conditions of the application.

[2] Neither WTI or WTA nor any affiliated person of WTI or WTA is or will be a broker or dealer.

[3] BNY Investment Advisors will serve as Subadvisor to the Initial Funds.

[4] Sixteen of the Initial Funds are Domestic Funds. The other Initial Funds are International Funds.

[5] WTI will license the Indexes to the Advisor for use in connection with the Funds. The license will specifically state that the Advisor must provide the use of the Indexes to the Funds at no cost.

[6] The Calculation Agent will determine the number, type and weight of securities that comprise each Index and perform, or cause to be performed, all other calculations that are necessary to determine the proper constitution of each Index. The Calculation Agent will not disclose any information about any Index's constitution to WTI, WTA, the Subadvisor or Funds prior to the publication of such information on the Web site. However, an employee of WTI and/or WTA will monitor the Methodology and the Indexes ("Index Administrator"), and other employees of WTI and/or WTA may be appointed to assist the Index Administrator ("Index Staff," and together with the Index Administrator, "Index Provider").

[7] Bloomberg L.P. will serve as Calculation Agent for the Initial Funds.

including potential changes to the Methodology, to, among others, the employees of WTA and the Subadvisor responsible for managing the Funds ("advisory personnel"). The Firewalls also prohibit WTA advisory personnel from sharing any non-public information about the Funds with the Index Provider. Further, WTA and the Subadvisor have, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. WTI, WTA, the Subadvisor and Distributor also have adopted or will adopt a Code of Ethics as required under rule 17j–1 under the Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1. In addition, WTI, WTA and the Subadvisor have adopted or will adopt policies and procedures to detect and prevent insider trading as required under section 204A of the Advisers Act, which are reasonably designed taking into account the nature of their business, to prevent the misuse in violation of the Advisers Act, Exchange Act, or rules and regulations under the Advisers Act and Exchange Act, of material non-public information.

4. Any Future Fund will be advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor and be in the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Initial Funds. Applicants will not offer a Future Fund unless either they have requested and received with respect to such Future Fund exemptive relief from the Commission or a no-action position from the staff of the Commission, or the Future Funds will be listed on an Exchange without the need for a filing under rule 19b–4 under the Exchange Act. In addition, any Future Fund that relies on any order granted pursuant to this application will comply with the terms and conditions of the application, including the following: (a) The Methodology will be publicly available, including on the Web site; (b) once the rules of the Methodology are established, applicants may change them only after giving the public at least 60 days advance notice of any change on the Web site; (c) applicants have Firewalls; (d) the Calculation Agent will not be an affiliated person, or an affiliated person of an affiliated person, of the Funds, Advisor, Subadvisor, Distributor or promoter of the Funds; and (e) the Indexes will be reconstituted on a fixed periodic basis no more frequently than quarterly.

5. The investment objective of each Fund will be to provide investment results that generally correspond, before fees and expenses, to the price and yield performance of the relevant Index. The intra-day value of each Index will be disseminated every 15 seconds throughout the trading day over the Consolidated Tape on each day that the Funds are open, which includes any day that the Funds are required by to be open under section 22(e) of the Act ("Business Day"). In seeking to achieve its investment objective, each Fund will utilize either a replication or a representative sampling strategy. A Fund using a replication strategy generally will invest in the Component Securities of the relevant Index in the same approximate proportions as in the relevant Index. In certain circumstances, such as when a Component Security is illiquid or there are practical difficulties or substantial costs involved in holding every security in an Index, a Fund may use a representative sampling strategy pursuant to which it will invest in some but not all of the Component Securities.[8] Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Index with the same degree of accuracy as an investment vehicle that invests in every Component Security in the same weighting as the Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Index of no more than 5%.

6. Shares of the Funds will be sold at a price of between $25 and $250 per Share in Creation Units of between 25,000 and 200,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant," an entity that has entered into an agreement with the Distributor and that is either (a) a participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission or (b) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash, though a Fund may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a "Creation Deposit" consisting of: (a) A portfolio of securities that has been selected by the Advisor or Subadvisor to correspond generally to the performance of the relevant Index ("Deposit Securities"), and (b) a cash payment to equalize any differences between the market value of the Deposit Securities per Creation Unit and the net asset value ("NAV") per Creation Unit ("Cash Requirement").[9] An investor purchasing a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.[10] Each Fund will disclose the maximum Transaction Fee in its prospectus ("Prospectus") and the method of calculating the Transaction Fee in its statement of additional information ("SAI"). None of the Funds will impose a sales load, sales charge or fee under rule 12b–1 under the Act.

[8] Each Fund will invest at least 95% of its assets in Component Securities. Each Fund may invest up to 5% of its assets in securities, which are not Component Securities but which the Advisor or Subadvisor believes will help the Fund track its Underlying Index, including futures, options and swap contracts, cash and cash equivalents, and other investment companies, including other exchange-traded funds within the limits of section 12(d)(1) of the Act. International Funds will have no less than 90% of their assets in Component Securities and may invest up to 10% of their assets in securities that are not Component Securities. In order to reduce any potential for tracking error, the Advisor or Subadvisor will invest such assets in securities that have aggregate investment characteristics (such as market capitalization) and fundamental characteristics (such as return variability, earnings valuation and yield) similar to those of the relevant Index. None of the Indexes will include depository receipts (*e.g.*, American Depository Receipts) as Component Securities. However, the Advisor or Subadvisor may include depository receipts on the list of Deposit Securities (as defined below) when holding the depository receipt will improve liquidity, tradability or settlement for an International Fund and may treat the depository receipt of a Component Security as a Component Security for purposes of applicants' representations related to the percentage of assets of an International Fund that will be invested in Component Securities.

[9] On each Business Day, prior to the opening of trading on the Exchange where the Fund's Shares are listed ("Listing Exchange"), the Advisor or Subadvisor will make available the list of the names and the required number of shares of each Deposit Security required for the Creation Deposit for the Fund. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit for the Fund is announced. Each Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities. The Listing Exchange will disseminate every 15 seconds throughout the trading day over the Consolidated Tape an amount representing, on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Requirement.

[10] When a Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the brokerage and other transaction costs incurred by the Fund to purchase the requisite Deposit Securities.

7. Orders to purchase Creation Units of a Fund will be placed with the Distributor who will be responsible for transmitting orders to the Funds. The Distributor will maintain a record of Creation Unit purchases. The Distributor will be responsible for issuing confirmations of acceptance and furnishing Prospectuses to purchasers of Creation Units.

8. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Exchange, such as the American Stock Exchange LLC, New York Stock Exchange and Nasdaq Stock Market, Inc. ("Nasdaq"), and traded in the secondary market in the same manner as other equity securities. It is expected that one or more members of the Listing Exchange will act, with respect to Nasdaq,[11] as a market maker ("Market Maker") or, with respect to any other Exchange, as a specialist ("Specialist"), and maintain a market on the Exchange for the Shares. The price of Shares traded on an Exchange will be based on a current bid/offer market. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. The Market Maker or Specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[12] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted ("Redemption Securities"), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Requirement. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor will pay a Transaction Fee, which is calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

11. Applicants state that neither the Trust nor any Fund will be marketed or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund will be marketed as an "exchange-traded fund," "investment company," "fund" and "trust." All marketing materials that refer to redeemability or describe the method of obtaining, buying or selling Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in the Prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) granting an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes thereof, from any of the provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at

[11] The listing requirements established by Nasdaq require that at least two Market Makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered Market Makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[12] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting the beneficial owners of Shares.

negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that the provisions of section 22(d), as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the International Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the International Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the International Funds to pay redemption proceeds up to 12 calendar days after the tender of a Creation Unit for redemption. At all other times and except as disclosed in the relevant Prospectus and/or SAI, applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.[13] With respect to Future Funds based on an International Index, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Fund.

Section 24(d) of the Act

9. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[14]

10. Applicants state that Shares will be listed on a Listing Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be exchange-listed, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on computer screens of brokers and other electronic services. The previous day's closing price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Web site will include, for each Fund, the prior Business Day's NAV, the reported closing price of a Share, and a calculation of the premium or discount of the closing price against such NAV, as well as data in chart format displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

11. Investors also will receive a short product description ("Product Description"), describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market. The Product Description will prominently disclose that the Indexes are created and sponsored by an affiliated person of the Advisor.

[13] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[14] Applicants state that they do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of Shares from the Funds or an underwriter. Applicants state that the Prospectus will caution persons purchasing Creation Units that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares and sells them directly to its customers, or if it chooses to couple the creation of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Section 12(d)(1) of the Act

12. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter or any broker or dealer ("Broker") that is registered under the Exchange Act from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

13. Applicants request an exemption to permit registered management investment companies ("Acquiring Management Companies") and unit investment trusts ("Acquiring Trusts," and together with the Acquiring Management Companies, "Acquiring Funds") that are not advised or sponsored by the Advisor or an entity controlling, controlled by or under common control with the Advisor, and not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii), as the Funds, to acquire Shares beyond the limits of section 12(d)(1)(A). Acquiring Funds exclude registered investment companies that are, or in the future may be, part of the same group of investment companies within the meaning of section 12(d)(1)(G)(ii) of the Act as the Funds. The requested exemption would also permit the Funds, their principal underwriters and any Broker knowingly to sell shares of the Funds to an Acquiring Fund in excess of the limits of section 12(d)(1)(B). Applicants request that the relief sought apply to (a) each Fund, (b) each Acquiring Fund that enters into a written agreement with a Fund ("Acquiring Fund Agreement"), and (c) any Broker.[15]

14. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Acquiring Fund Advisor") and may be advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an "Acquiring Fund Subadvisor"). Any investment adviser to an Acquiring Fund will be registered or exempt from registration under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor ("Sponsor").

15. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

16. Applicants believe that neither the Acquiring Funds nor an Acquiring Fund Affiliate would be able to exert undue influence over the Funds.[16] To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the Acquiring Fund Advisor, Sponsor, any person controlling, controlled by or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Advisor, Sponsor, or any person controlling, controlled by or under common control with an Acquiring Fund Advisor or Sponsor ("Acquiring Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund Subadvisor, any person controlling, controlled by or under common control with the Acquiring Fund Subadvisor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadvisor or any person controlling, controlled by or under common control with the Acquiring Fund Subadvisor ("Acquiring Fund's Subadvisory Group").

17. Applicants also propose conditions 9–14, stated below, to limit the potential for undue influence by an Acquiring Fund over a Fund. Condition 9 precludes an Acquiring Fund and Acquiring Fund Affiliates from causing any potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.[17] Condition 12 precludes an Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) from causing a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting").[18]

18. Applicants represent that as an additional assurance that Acquiring Funds understand the implications of an investment in a Fund under the requested order, any Acquiring Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into an Acquiring Fund Agreement with the Fund. The Acquiring Fund Agreement will ensure that the Acquiring Fund understands and agrees to comply with the terms and conditions of the requested order. The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in the Funds and not in any other investment company. Applicants note that a Fund may choose to reject any direct purchase of Creation Units by an Acquiring Fund.[19]

19. Applicants do not believe the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. In

[15] An Acquiring Fund may rely on the requested order only to invest in the Funds and not in any other investment company.

[16] The "Acquiring Fund Affiliates" are the Acquiring Fund Advisor, Acquiring Fund Subadvisor(s), Sponsor, promoter or principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities.

[17] The "Fund Affiliates" are the Advisor, Subadvisor(s), promoter and principal underwriter of a Fund, and any person controlling, controlled by or under common control with any of these entities.

[18] An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Subadvisor, Sponsor, or employee of the Acquiring Fund, or a person which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Subadvisor, Sponsor, or employee is an affiliated person, except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

[19] A Fund would retain its right to reject any initial investment by an Acquiring Fund in excess of the limit in section 12(d)(1)(A)(i) by declining to execute the Acquiring Fund Agreement with the Acquiring Fund.

addition, an Acquiring Fund Advisor or a Sponsor or trustee of an Acquiring Trust ("Trustee") will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from the Fund by the Acquiring Fund Advisor, Sponsor or Trustee or an affiliated person of the Acquiring Fund Advisor, Sponsor or Trustee, in connection with the investment by the Acquiring Fund in the Fund (other than advisory fees). Applicants state that any sales charges or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD ("Rule 2830").

20. Applicants submit that the proposed arrangement will not create an overly complex structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that the Acquiring Fund Agreement will require any Acquiring Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in Funds, and to disclose in "plain English" in its prospectus the unique characteristics of the Acquiring Funds investing in Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds.

Sections 17(a)(1) and (2) of the Act

21. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants request two exemptions under sections 6(c) and 17(b) from section 17(a).

22. First, applicants request an exemption from 17(a) to permit (a) persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of a Fund's, or two or more Funds', Shares ("First-Tier Affiliates") and (b) affiliated persons of First-Tier Affiliates who are not otherwise affiliated with the Fund, and persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of the outstanding voting securities of other registered investment companies (or series thereof), which are not Funds, advised by the Advisor ("Second-Tier Affiliates") to purchase and redeem Creation Units through in-kind transactions. Applicants contend that no useful purpose would be served by prohibiting the First- and Second-Tier Affiliates from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the Portfolio Securities. Therefore, applicants state, the in-kind purchases and redemptions for which relief is requested will afford no opportunity for the affiliated persons of a Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to other holders of Shares. Applicants also believe that these in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

23. Second, applicants request an exemption from section 17(a) to permit a Fund, which is an affiliated person of an Acquiring Fund because the Acquiring Fund holds 5% or more of the Fund's Shares, to sell its Shares to, and redeem its Shares from, the Acquiring Fund.[20] Applicants state that any consideration paid for Shares in transactions with a Fund will be based on the Fund's NAV. Applicants also state that any transactions directly between the Funds and the Acquiring Funds will be consistent with the policies of each Acquiring Fund. Applicants further state that the purchase of Creation Units by an Acquiring Fund will be accomplished in accordance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. Applicants note that the Acquiring Fund Agreement will require each Acquiring Fund to represent that any purchase of Creation Units will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

[20] Applicants expect that most Acquiring Funds will purchase Shares in the secondary market and will not transact in Creation Units with a Fund.

Applicants' Conditions

Applicants agree that any order granting the ETF Relief will be subject to the following conditions:

1. Applicants will not register a Future Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless either (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Exchange.

3. Neither the Trust (with respect to any Fund) nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and

discounts at which the Fund's Shares have traded.

5. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Index.

6. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, a Listing Exchange rule requiring Listing Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

7. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

Applicants agree that any order of the Commission granting the 12(d)(1) Relief will be subject to the following conditions:

8. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Shares of a Fund, an Acquiring Fund's Advisory Group or an Acquiring Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Shares of the Fund, it will vote its Shares in the same proportion as the vote of all other Shareholders of the Fund's Shares. This condition will not apply to the Acquiring Fund's Subadvisory Group with respect to a Fund for which the Acquiring Fund Subadvisor or a person controlling, controlled by or under common control with the Acquiring Fund Subadvisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

9. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

10. The board of directors or trustees of an Acquiring Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to assure that the Acquiring Fund Advisor and any Acquiring Fund Subadvisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

11. Once an investment by an Acquiring Fund in the securities of a Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the board of trustees of the Funds ("Board"), including a majority of the independent trustees, will determine that any consideration paid by the Fund to the Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

12. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

13. The Board, including a majority of the independent trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of the Fund's shareholders.

14. The Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

15. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers. or Sponsor and Trustee, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit

in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

16. The Acquiring Fund Advisor, Sponsor or Trustee, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Acquiring Fund Advisor, Sponsor or Trustee, or an affiliated person of the Acquiring Fund Advisor, Sponsor or Trustee, other than any advisory fees paid to the Acquiring Fund Advisor, Sponsor or Trustee, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Subadvisor will waive fees otherwise payable to the Acquiring Fund Subadvisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Subadvisor, or an affiliated person of the Acquiring Fund Subadvisor, other than any advisory fees paid to the Acquiring Fund Subadvisor or its affiliated person by the Fund, in connection with the investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Subadvisor. In the event that the Acquiring Fund Subadvisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

17. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

18. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

19. Before approving any investment advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and the basis upon which they are made will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53824; File No. SR–Amex–2006–43]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List for Trading Options on the iShares MSCI Emerging Markets Index Fund

May 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Amex has filed the proposed rule change, pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the iShares MSCI Emerging Markets Index Fund ("Fund Options"). The Exchange has designated this proposal as non-controversial and has requested that the Commission waive both the five-day pre-filing requirement and the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[5] The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks approval to list for trading on the Exchange options on the iShares MSCI Emerging Markets Index Fund ("Fund"). Commentary .06 to Amex Rule 915 and Commentary .07 to Amex Rule 916, respectively (the "Listing Standards") establish the Exchange's initial listing and maintenance standards. The Listing Standards permit the Exchange to list funds structured as open-end investment companies, such as the Fund, without having to file for approval with the Commission to list for trading options on such funds.[6] The Exchange submits that the Fund meets substantially all of the Listing Standard requirements, and for the requirements that are not met, sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund.

The Fund is an open-end investment company designed to hold a portfolio of securities that tracks the MSCI Emerging

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19–4(f)(6)(iii).

[6] Commentary .06 to Amex Rule 915 sets forth the initial listing and maintenance standards for shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on a national securities exchange or through the facilities of a national securities exchange and reported as a national market security, and that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust, or other similar entity.

Markets Index ("Index")[7]. The Fund employs a "representative sampling" methodology to track the Index, which means that the Fund invests in a representative sample of securities in the Index that have a similar investment profile as the Index.[8] Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Index. The Fund generally invests at least 90% of its assets in the securities of the Index or in American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs") representing such securities. In order to improve portfolio liquidity and give the Fund additional flexibility to comply with the requirements of the U.S. Internal Revenue Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets, the Fund also has the authority to invest the remainder of its assets in securities that are not included in the Index or in ADRs and GDRs representing such securities. The Fund may invest up to 10% of its assets in other MSCI index funds that seek to track the performance of equity securities of constituent countries of the Index. The Fund is not permitted to concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that the Index concentrates in the stocks of such particular industry or group of industries. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund ("Fund Shares") are issued in exchange for an "in kind" deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregation size of 150,000 shares (each, a "Creation Unit"), as set forth in the Fund's prospectus. The Fund issues and sells Fund Shares in Creation Unit sizes through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and "in kind," with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The Exchange notes that the maintenance listing standards set forth in Commentary .07 to Amex Rule 916 for open-end investment companies do not include criteria based on either the number of shares or other units outstanding or on their trading volume. The absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of manipulation, since whenever the market price for such shares departs from net asset value, arbitrage will occur. Similarly, since the Fund meets all of the requirements of the Listing Standards except as described below, the Exchange believes that the same analysis applies to the Fund.

The Exchange has reviewed the Fund and determined that it satisfies the Listing Standards except for the requirement set forth in Commentary .06(b)(i) to Amex Rule 915, which requires the Fund to meet the following condition: "any non-U.S. component stocks in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio." The Exchange currently has in place surveillance agreements with foreign exchanges that cover 46.72% of the securities in the Fund. One of the foreign exchanges on which component securities of the Fund are traded and with which the Exchange does not have a surveillance agreement is the Bolsa Mexicana de Valores ("Bolsa"). The percentage of the weight of the Fund represented by these securities is 7.42%.

The Exchange understands that the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a surveillance agreement. The Exchange previously attempted to enter into a surveillance agreement with Bolsa as part of seeking approval to list and trade options on the Mexico Index[9]. Additionally, the Chicago Board Options Exchange, Incorporated (the "CBOE") also previously attempted to enter into a surveillance agreement with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised of stocks trading on Bolsa.[10] Since, in both instances, Bolsa was unable to provide a surveillance agreement, the Commission previously allowed the Exchange and the CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV, dated as of October 18, 1990 ("MOU"). The Commission noted in the respective Approval Orders that in cases where it would be impossible to secure an agreement, the Commission relied in the past on surveillance sharing agreements between the relevant regulators. The Commission further noted in the respective Approval Orders that pursuant to the terms of the MOU, it was the Commission's understanding that both the Commission and the CNBV could acquire information from and provide information to the other, similar to that which would be required in a surveillance sharing agreement between exchanges, and therefore, should the Exchange or the CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.[11] The Exchange

[7] As provided on the Web site of Morgan Stanley Capital International Inc. ("MSCI") (*http://www.msci.com*), which is the entity that created and currently maintains the Index, the Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Index. As of March 31, 2006, the Index was comprised of 828 constituents with the top five constituents representing the following weights: 4.08%, 2.14%, 2.14%, 1.76%, and 1.72%. The Index is rebalanced quarterly, calculated in U.S. Dollars on a real time basis, and disseminated every 60 seconds during market trading hours.

[8] The Fund is comprised of 267 securities as of March 31, 2006. Samsung Electronics Co LTD GDR, a South Korean security, has the greatest individual weight at 5.78%. The aggregate percentage weighting of the top 5, 10, and 20 securities in the Fund are 18.36%, 28.24%, and 43.46%, respectively.

[9] *See* Securities Exchange Act Release No. 34500 (August 8, 1994), 59 FR 41534 (August 12, 1994).

[10] *See* Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995).

[11] The Exchange also states that the Commission noted if securing an information sharing agreement is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. In such case, the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the

has attempted to contact Bolsa with a request to enter into a surveillance agreement. The Exchange is uncertain whether the same barriers that prevented Bolsa from previously entering into an information sharing agreement still exist today. In this regard, the Exchange requests permission to rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities for the component securities in the Fund that trade on Bolsa until the Exchange is able to secure a surveillance agreement with Bolsa. The Exchange believes this request is reasonable in that the Commission has already acknowledged that the MOU permits both the Commission and the CNBV to acquire information from and provide information to the other, similar to that which would be required in a surveillance sharing agreement between exchanges. The Commission's approval of this request would otherwise render the Fund compliant with all of the Listing Standards.[12]

The Exchange will list the Fund Options subject to a sixty-day pilot program and rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities until the Exchange is able to secure a surveillance agreement with Bolsa. During this period, the Exchange agrees to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (i) Express language addressing market trading activity, clearing activity, and customer identity; (ii) Bolsa's reasonable ability to obtain access to and produce requested information; and (iii) based on the comprehensive surveillance agreement and other information provided by Bolsa, the absence of existing rules, laws, or practices that would impede the Exchange from foreign information relating to market activity, clearing activity, or customer identity, or, in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information. The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

Amex requests that the Commission waive both the five-day pre-filing requirement and the 30-day pre-operative period specified in Rule 19b–4(f)(6)(iii).[17] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that waiving the 30-day pre-operative period is consistent with the protection of investors and public interest. The Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with the Bolsa during a sixty-day pilot period in which the Exchange will rely on the MOU with respect to surveillance of Fund components trading on Bolsa. The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa. The Commission notes that Amex currently has in place surveillance agreements with foreign exchanges that cover 46.72% of the securities in the Fund and that the Index upon which the Fund is based appears to be a broad-based index. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

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.[19]

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–Amex–2006–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

Commission and the foreign regulator. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[12] The Exchange notes that the component securities of the Fund change periodically. Therefore, the Exchange may in fact have in place surveillance agreements that would otherwise cover the percent weighting requirements set forth in the Listing Standards for securities not trading on Bolsa. In this event, the Fund would satisfy all of the Listing Standards and reliance on an approval order for the Fund would be unnecessary.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of 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-Amex-2006–43 and should be submitted on or before June 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7872 Filed 5–23–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53816; File No. SR–CBOE–2006–50

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

May 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room..

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker ("RMM") appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd ("VTC") Appointment, which confers the right to quote electronically in a certain number of products selected from various Tiers. Currently, there are five Tiers (Tiers A, B, C, D, and E) that are structured according to trading volume statistics, and an "A+" Tier which consists of four option classes—options on Standard & Poor's Depositary Receipts (SPY), options on the Nasdaq-100 Index Tracking Stock (QQQQ), options on Diamonds (DIA), and options based on The Dow Jones Industrial Average (DJX). CBOE Rule 8.4(d) assigns appointment costs to Hybrid 2.0 Classes based on the Tier in which they are located, and an RMM may select for each Exchange membership it owns or leases any combination of products trading on the Hybrid 2.0 Platform[5] whose aggregate appointment cost does not exceed 1.0.

CBOE proposes to make the following changes to the Tiers. First, CBOE proposes to remove from the A+ Tier DIA options and DJX options. Going forward, DIA options and DJX options would fall within one of the remaining Tiers A through E depending on their trading volume. As a result of this change, the appointment costs for DIA options and DJX options would be reduced from .25 to the appointment cost for whichever Tier (A through E) they are assigned. This change would lower an RMM's cost to receive an appointment in these two Hybrid 2.0 Classes. Second, CBOE proposes to create a new Tier—the "AA" Tier, and place within it options on the CBOE Volatility Index (VIX). CBOE proposes to assign an appointment cost of .50 to VIX options. Currently, VIX options are traded on the Hybrid Trading System, but not on the Hybrid 2.0 Platform.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE Rule 1.1(aaa) defines Hybrid Trading System and Hybrid 2.0 Platform.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the proposal may take effect upon filing. The Exchange believes that the proposal to lower the appointment costs for the DIA and DJX option classes does not raise any new regulatory issues and promotes competition by reducing the access costs of trading in multiple options classes as an RMM. The Exchange believes that the proposal to add VIX options to a new AA Tier also does not raise any new, unique, or substantive issues from those raised in previous CBOE rule changes relating to these Tiers. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may take effect upon filing.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2006–50 and should be submitted on or before June 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7916 Filed 5–23–06; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53832; File No. SR–CBOE–2006–46]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 15.9, Regulatory Cooperation

May 18, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 8, 2006, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act,[3] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 15.9, Regulatory Cooperation, to clarify that the Exchange may contract with another self-regulatory organization ("SRO") for the performance of certain of CBOE's regulatory functions. The text of the proposed rule change is available on the Exchange's Web site, *http://www.cboe.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 15.9(a) allows the Exchange to enter into agreements with domestic and foreign SROs, associations and contract markets and the regulators of such markets for the exchange of information and other regulatory purposes.[4]

The Exchange proposes to amend CBOE Rule 15.9 to expressly allow the Exchange to contract with another SRO for the performance of certain of CBOE's regulatory functions. The proposed rule change would enhance CBOE's ability to carry out its regulatory obligations under the Act by providing CBOE the ability to contract with another SRO for regulatory services.

Under any agreement for regulatory services with another SRO, CBOE would remain an SRO registered under section 6 of Act[5] and, therefore, would continue to have statutory authority and responsibility for enforcing compliance by its members, and persons associated with its members, with the Act, the rules thereunder, and the rules of the Exchange.

The proposed rule change specifically states that any action taken by another SRO, or its employees or authorized agents, operating on behalf of CBOE pursuant to a regulatory services agreement with CBOE, would be deemed an action taken by CBOE. Under any agreement for regulatory services with another SRO, CBOE would retain ultimate responsibility for performance of its SRO duties, and the proposed rule change states that CBOE shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

[4] The Exchange has entered into a Regulatory Services Agreement ("RSA") with other options markets participating in the proposed Options Regulatory Surveillance Authority ("ORSA") national market system plan. Under the ORSA RSA, CBOE will provide certain regulatory services to the other options markets.

[5] 15 U.S.C. 78f.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of sections 6(b)(1), 6(b)(6) and 6(b)(7) of the Act[7] in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b-4 thereunder.[9] The Exchange has requested that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing. The Commission hereby grants the request. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. In this regard, the Commission believes that the proposal should be implemented without delay because of its immediate applicability with respect to the proposed ORSA plan.[10] For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE–2006–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–46. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)(6); and 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(6

[10] The Commission notes that the proposed rule change is based on a similar rule of the Boston Stock Exchange, Inc. *See* Securities Exchange Act Release No. 53436 (March 7, 2006), 71 FR 13194 (March 14, 2006) (SR-BSE–2006–08).

[11] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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-CBOE-2006-46 and should be submitted on or before June 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6-7918 Filed 5-23-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53825; File No. SR-NYSE-2006-38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Financial Listing Criteria

May 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 16, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Listed Company Manual (the "Manual") to allow domestic companies to qualify for listing, under certain limited circumstances, on the basis of their earnings, cash flows or revenues, as applicable, in the most recent completed nine-month period. However the Exchange must conclude that the company can reasonably be expected to qualify under the regular standard upon completion of its then current fiscal year.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

NYSE proposes to amend its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Listed Company Manual (the "Manual") to allow companies seeking to list under the Exchange's domestic standards to qualify for listing, under certain limited circumstances, on the basis of their earnings, cash flows or revenues, as applicable, in the most recent completed nine-month period.

Section 102.01C of the Manual allows companies to list under the Exchange's domestic listing criteria by meeting one of the following three standards:

• *Earnings Test* (1) Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, adjusted for certain specified items, must total at least $10,000,000 in the aggregate for the last three fiscal years together with a minimum of $2,000,000 in each of the two most recent fiscal years, and positive amounts in all three years.

• *Valuation/Revenue with Cash Flow Test*—

(1) At least $500,000,000 in global market capitalization,

(2) At least $100,000,000 in revenues during the most recent 12 month period, and

(3) At least $25,000,000 aggregate cash flows for the last three fiscal years with positive amounts in all three years, subject to certain adjustments.

• *Pure Valuation/Revenue Test*—

(1) At least $750,000,000 in global market capitalization, and

(2) At least $75,000,000 in revenues during the most recent fiscal year.

Over the years, the Exchange states that it has been unable to list a number of financially healthy companies because those companies had insufficient earnings, cash flows, or revenues in the earliest fiscal year required by the applicable standard. In many cases, such a company is very different at the time of its listing application from the company that had existed in such earlier period. Such company may have undergone a recapitalization transaction in which it substantially reduced its debt burden. Alternatively, the company may have undergone a significant change in its operations, including, but not limited to:

• A divestiture or discontinuation of a loss-making business line,

• A change in management,

• An acquisition or series of acquisitions,

• Economies of scale and increased revenues as the company emerges from its start-up phase,

• The effect of foreign currency valuation,

• Entering a new geographic region or market or exiting a geographic region or market, or

• The launch of a new product or service.

Therefore, the Exchange proposes to amend Section 102.01C(I) and (II) (the "Earnings" and "Valuation/Revenue with Cash Flow" Tests) to enable it to qualify a company based on the most recent completed nine months in lieu of the earliest fiscal year otherwise required by the applicable standard, in circumstances where a recapitalization transaction or significant change in operations has rendered irrelevant the financial position of the company in

that third year back and the company would meet the requirements of Section 102.01C(I) or (II) based on the most recent nine months and the two immediately preceding fiscal years. For the same reasons, the Exchange proposes to amend Section 102.01C(III) (the "Pure Valuation/Revenue" Test) on the basis of the most recent nine months, instead of a full fiscal year. In such cases, the Exchange must conclude that the Company can reasonably be expected to qualify under the regular standard upon completion of its then current fiscal year.

The Exchange believes that investors are not protected less by the qualification for listing of companies that can meet the Earnings or Valuation/Revenue with Cash Flow Tests on the basis of 33 months of financial history, including their last two completed fiscal quarters, than by the qualification of companies based on an older three-year period, particularly if a recapitalization or significant change in operations has materially changed the nature of the company. Similarly, the Exchange believes that investors are not protected less by the qualification for listing of companies that can meet the Pure Valuation/Revenue Test on the basis of the most recently completed nine months period, rather than an older twelve month period. The Exchange believes that any company it would qualify for listing on the basis of the proposed amendment would meet the existing standards of Section 102.01C with the passage of time upon completion of its next fiscal year.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)[6] of the Act, in general, and Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change 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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has asked the Commission to waive the 30-day operative delay specified in Rule 19b–4(f)(6)(iii).[10] The Commission hereby grants that request because the Commission believes that waiving the 30-day operative period is consistent with the protection of investors and public interest.[11] In its proposal to qualify a company, in the case of the Earnings Test and Valuation/Revenue with Cash Flow Test, on the basis of 33 months of financial history and, in the case of the Pure Valuation/Revenue Test, on the basis of nine months of financial history, the Exchange has stated its belief that any company that it would qualify for listing on the basis of the proposed rule change would meet the existing standards of Section 102.01C upon completion of its next fiscal year. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–38 and should be submitted by June 14, 2006.

[5] For purposes of Rule 3a51–1(a)(1) under the Act, the Exchange states that, as proposed to be amended herein, its initial listing standards will be substantially similar to the initial listing standards in place on January 8, 2004. 17 CFR 240.3a51–1(a)(1).

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Exchange also requested that the Commission waive the five-day pre-filing requirement; however, the Exchange provided the Commission with such notice; therefore, this request is moot.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7914 Filed 5–23–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53834; File No. SR–NYSE–2006–32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the NYSE Retail Trading Product and the NYSE Program Trading Product

May 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish fees for two new market data products: The NYSE Retail Trading Product and the NYSE Program Trading Product. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to a separate proposed rule change that NYSE has filed contemporaneously with the proposed rule change (*see* SR–NYSE–2006–31; the "Pilot Program Filing"), NYSE proposes to make available to vendors and investors the following:

(1) The NYSE Retail Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as trades for accounts of "individual investors" [3] and (B) an end-of-day summary of the retail trading activity on the Exchange for that day, including total buy-and-sell retail share volume for each stock traded (the "End-of-Day Retail Trading Summary").

(2) The NYSE Program Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as program trades [4] and (B) an end-of-day summary of program trading activity on the Exchange for that day, including total index arbitrage (as opposed to non-index arbitrage) program trading volume (the "End-of-Day Program Trading Summary").

Each published report of a trade execution that is included in the datafeed for either product shall indicate such information as the security's symbol, the size of the trade, the time of the trade's execution and other related information.[5] (More information regarding the NYSE Retail Trading Product and the NYSE Program Trading Product can be found on the NYSE Web site at *http://www.nysedata.com/InfoTools.*)

The Exchange believes the NYSE Retail Trading Product should provide investors with increased information regarding individual investors' trading activity on the Exchange. Similarly, the NYSE Program Trading Product should provide investors with increased information regarding program trading activity.

Pursuant to the proposed rule change, NYSE proposes to establish:

(1) A monthly access fee of $1,500 for receipt of the NYSE Retail Trading Product datafeed (for receipt of the real-time datafeed, the end-of-day summaries, or both);

(2) A monthly access fee of $1,500 for receipt of the NYSE Program Trading Product datafeed (for receipt of the real-time datafeed, the end-of-day summaries, or both);

(3) A monthly display fee of $2.00 that the vendor or its subscribers are to pay for each display device receiving NYSE Retail Product information and/or NYSE Program Trading Product information (collectively, "NYSE Trading Information") that the vendor makes available from the real-time datafeed; and

(4) A monthly fee of $250 if the vendor makes NYSE Trade Information available from the end-of-day summaries, rather than from the real-time datafeeds.

In addition, each vendor of NYSE Trading Information will receive a monthly credit of $2 for each device that the vendor has entitled to receive displays of NYSE Trading Information, up to a maximum of:

(1) $3,000 per month if the vendor pays the monthly access fees for both the NYSE Retail Trading Product datafeed and the NYSE Program Trading Product datafeed (which two monthly access fees total $3,000); and

(2) $1,500 per month if the vendor pays the monthly access fees for either the NYSE Retail Trading Product datafeed or the NYSE Program Trading Product, but not both (either of which monthly access fees equals $1,500).

The Exchange would commence to impose those fees 30 days after the Commission approves them. NYSE believes that the access and device fees for the NYSE Retail Trading Product and the NYSE Program Trading Product would reflect an equitable allocation of NYSE's overall costs to users of its facilities.

The access fees, the device fees and the device fee credit apply equally to every vendor. The Exchange notes that it proposes to set the device fee offset of access fees (*i.e.* the device fee credit) at such low levels (*i.e.*, a $1500 access fee is offset in full if only 750 of a vendor's customers subscribe to the service) that the vast majority of vendors that wish to

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For this purpose, the "account of an individual investor" means an account covered by Section 11(a)(1)(E) of the Act. That section refers to the "account of a natural person, or a trust created by a natural person for himself or another natural person."

[4] For this purpose, "program trading" has the definition that Supplementary Material .40(b) to NYSE Rule 80A ("Index Arbitrage Trading Restrictions") gives to that term.

[5] NYSE will only include in the NYSE Retail Trading Product and the NYSE Program Trading Product information that is attached to execution reports. While the NYSE believes the information contained in the NYSE Retail Trading Product and the NYSE Program Trading Product is accurate, the NYSE does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based.

provide displays of this information are likely, in effect, not to pay access fees.

In arriving at the monthly $1500 access fee, the $2 device fee and the $250 redistribution fee, the Exchange took into account the cost of collecting, processing and making available NYSE Trading Information, and assessed the value of the two products relative to other data products that the Exchange makes available, such as NYSE OpenBook and NYSE Alerts. The Exchange believes that the fees would enable the users of NYSE Trading Information to make an appropriate contribution to the recovery of the overall costs of NYSE's operations and that the fees are reasonably related to the value that the two products provide to those who use them.

The Exchange is not proposing to impose any attribution requirements on vendors displaying NYSE Trading Information. However, the Exchange believes that it is incumbent on vendors to identify and display information in a manner that avoids investor confusion. This is especially true at a time when markets are offering investors, who have grown accustomed to viewing consolidated information over the past three decades, many new exchange-specific information services.

Thus, while the Exchange is not proposing to impose any attribution requirement, it does propose to have vendors provide, by link or otherwise, a description of the NYSE Retail Trading Product and NYSE Program Trading Product in a manner that is reasonably transparent and accessible to subscribers of the two products. The Exchange will require the Exhibit A to each vendor's contract with the Exchange for the receipt and redistribution of the NYSE Retail Trading Product and NYSE Program Trading Product to describe how the vendor will make the description available.

The description should read substantially as follows:

> NYSE Rule 132B requires each NYSE member firm to record for each order that it submits to the Exchange such information as whether the firm is placing the order for the account of a retail customer or whether the order results from program trade trading activity. NYSE uses this information to produce the NYSE Retail Trading Product and NYSE Program Trading Product, each of which includes real-time information relating to retail trading and program trading activity, respectively, as well as daily summaries and historical databases of that information.
>
> While the NYSE believes the information contained in the NYSE Retail Trading Product and NYSE Program Trading Product is accurate, Customer understands that its agreement with NYSE provides that NYSE (1) Reserves all rights to that information, (2) does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based, and (3) shall not be liable for any loss due either to their negligence or to any cause beyond their reasonable control.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among Exchange participants, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–32. 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 publicly available. All submissions should refer to File Number SR–NYSE–2006–32 and should be submitted on or before June 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7915 Filed 5–23–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Cancellation for Public Meeting

In accordance with the Women's Business Ownership Act (Pub. L. 106–554 as amended) the National Women's Business Council (NWBC) public meeting on Capitol Hill, originally scheduled for Tuesday, May 23, 2006, is being postponed until September 2006. The NWBC Web site will be updated shortly with information on the new date, time and location.

We hope you will be able to join the NWBC in September 2006. If you have any questions, please contact the National Women's Business Council at 202–205–3850 or *info@nwbc.gov*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–7974 Filed 5–23–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of the Treasury, Bureau of the Public Debt (BPD)—Match Number 1038

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on June 25, 2006.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with BPD.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 6, 2006.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Department of the Treasury, Bureau of the Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures for BPD's disclosure of certain savings security information to SSA. (The term "savings security" means Series E, EE or I United States Savings Securities.) SSA will use the match results to verify eligibility and payment amounts of individuals under the Supplemental Security Income (SSI) program. The SSI program was created under title XVI of the Social Security Act (the Act) to provide benefits under the rules of that title to individuals with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Program Sections 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1383(e)(1)(B) and (f)).

D. Categories of Records and Individuals Covered by the Matching Program

SSA will provide BPD with a finder file extracted from SSA's Supplemental Security Income Record and Special Veterans Benefits system of records containing Social Security numbers of individuals who have applied for, or receive, SSI payments. This information will be matched with BPD files in BPD's savings-type securities registration systems of records (United States Savings Type Securities and Retail Treasury Securities Access Application) and a reply file of matched records will be furnished to SSA. Upon receipt of BPD's reply file, SSA will match identifying information from the BPD file with SSA's records to determine preliminarily whether the data pertain to the relevant SSI applicant or recipient before beginning the process of verifying savings security ownership and taking any necessary benefit actions.

E. Inclusive Dates of the Matching Program

The matching program will become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E6–7869 Filed 5–23–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–14]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2001–10967] 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 am and 5 pm, Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Shanna Harvey (202) 493–4657,or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 17, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2001–10967.

Petitioner: Experimental Aircraft Association.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and appendices I and J to part 121.

Description of Relief Sought: To permit Experimental Aircraft Association (EAA), to authorize a pilot or an event sponsor (EAA Chapter) to participate in up to six charitable sightseeing events per calendar year based upon special or unique community needs.

[FR Doc. E6–7858 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of a Supplemental Draft Environmental Impact Statement on East-West Corridor Transit Improvements in Miami-Dade County, FL

AGENCIES: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare a supplemental draft environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and Miami-Dade Transit (MDT) intend to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), for the proposed East-West Transit Corridor Study in Miami-Dade County, Florida, between Florida International University (FIU) and the Miami Intermodal Center (MIC) at Miami International Airport (MIA). The SDEIS will evaluate at least three alternatives: a No-Build Alternative; a Transportation System Management (TSM) Alternative; a Build Alternative; and any reasonable alternatives uncovered during the public scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, Federal, State and local agencies. MDT will create a Coordination Plan to actively include public and participating agency involvement and comment during the entire NEPA process. The Coordination Plan will be found on the East-West Corridor Web site at *http://www.miamidade.gov/transit.* The purpose of this Notice of Intent is to re-notify interested parties of the intent to prepare the SDEIS and invite participation in the Study. An Advance Notification for the original East-West Corridor Multimodal Project was issued in 1993. The study area being evaluated in this SDEIS traverses the western portion (*i.e.*, FIU to MIC) of the entire East-West Corridor between FIU and the Port of Miami that was studied in the East-West Multimodal Corridor Major Investment Study/Draft Environmental Impact Statement (MIS/DEIS) in 1995 and the East-West Multimodal Corridor Final Environmental Impact Statement (FEIS) in 1998. A Locally Preferred Alternative (LPA)/Minimum Operable Segment (MOS) emerged from this process and was the subject of a Record of Decision jointly issued by the Federal Highway Administration (FHWA) and FTA in 1998. With approval of the People's Transportation Plan (PTP) by Miami-Dade County voters in 2002, along with changes in growth and development along the western portion of the corridor, a redefinition of planned transit investments resulted in the locally proposed alternative. It is the intention of this action to improve mobility in the East-West Corridor.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Ms. Maria C. Batista, Project Manager by June 30, 2006. See **ADDRESSES** below. *Scoping Meetings:* A Miami-Dade Transit agency coordination meeting will be held on Wednesday, June 7, 2006 from 2 p.m. to 5 p.m. at Florida International University, Miami, Florida. Public scoping meetings will be held on Wednesday, June 7, 2006 from 7 p.m. to 9 p.m. at Florida International University, Miami, Florida, and on Tuesday, June 13, 2006 from 7 p.m. to 9 p.m. at St. Dominic Catholic Church, Miami, Florida. See **ADDRESSES** below.

ADDRESSES: *Written comments* on the project scope should be sent to Ms. Maria C. Batista, Project Manager, Miami-Dade Transit, 111 NW., First Street, Suite 910, Miami, Florida 33128–1970. The fax number is 305.372.6017.

Scoping meetings will be held at the following locations:

Agency Coordination Meeting

Wednesday, June 7, 2006 from 2 p.m. to 5 p.m.

Florida International University, Graham Building, University Park, 11200 SW 8th Street, Miami, Florida.

Public Meetings

Wednesday, June 7, 2006 from 7 p.m. to 9 p.m.

Florida International University, Graham Building, University Park, 11200 SW 8th Street, Miami, Florida. Tuesday, June 13, 2006 from 7 p.m. to 9 p.m. St. Dominic Catholic Church, Senior Center Hall, 5849 NW 7th Street, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Dittmeier, Transportation Program Specialist, Federal Transit Administration, Atlanta Regional Office, (404) 562–3512.

SUPPLEMENTARY INFORMATION:

I. Scoping

The current East-West Transit Corridor SDEIS is re-examining improved transit service in the portion of the East-West Corridor between FIU and the MIC at MIA. The MDT and FTA invite interested individuals, organizations, and Federal, State, and local agencies to participate in defining the purpose and need for, and refining the scope of the East-West Transit Corridor SDEIS. Comments should focus on identifying any significant social, economic, or environmental issues related to the proposed alternatives. Specific suggestions related to alignment variations to be examined and issues to be addressed are welcome and will be considered in the final scope for the study. Scoping comments should focus on the issues for analysis. Comments may be made at the scoping meetings or in writing no later than June 30, 2006. See **DATES** and **ADDRESSES** above for meeting times and locations and the address for written comments. A scoping information packet is available from Ms. Maria C. Batista at the address given above or on the MDT internet Web page at *http://www.miamidade.gov/transit*. See **ADDRESSES** above.

II. Description of Study Area and Project Need

The study area is located in central Miami-Dade County, Florida, beginning at the University Park Campus of FIU and ending just past MIA at the proposed MIC. The study area covers approximately a three-mile by nine-mile rectangle, generally bounded by NW 25th Street on the north; SW 8th Street on the south; the Homestead Extension of Florida's Turnpike (SR 821) on the west; and NW 37th Avenue to the east. It encompasses the area 1.5 miles north and south of the Dolphin Expressway (SR 836). The study area includes portions of the Cities of Miami, Sweetwater, and Doral, as well as areas within unincorporated Miami-Dade County. This area is highly urbanized with the older and denser development to the east (*i.e.*, downtown Miami and Miami Beach), and the more recent and less dense development in the suburbs to the west and south.

The proposed transit alternative would serve the airport, portions of the City of Miami along the Dolphin Expressway, the City of Sweetwater, the City of Doral and FIU. It would provide an additional means of transportation within and through the heavily-congested East-West Corridor, thereby improving accessibility to major activity centers in the corridor and in the region generally. This would include improved mobility between residential suburbs to the south and west and the employment, cultural, and tourism centers to the east such as MIA, downtown Miami, the Port of Miami, and Miami Beach.

The purpose of and need for pursuing additional transit options to address mobility and accessibility issues in the East-West Corridor is based on the following key elements:

- The Miami-Dade Metropolitan Planning Organization (MPO), MDT, elected officials, and the people of Miami-Dade County have shown their commitment to major transportation capital investment in the corridor through officially adopted plans and approval of a referendum to commit sales tax revenues to fund expansion of the Metrorail system in this corridor.
- The roadway network in the corridor is heavily congested with many segments that have significantly high crash rates and unreliable travel conditions and times.
- The corridor contains several major employment/activity centers, including Miami International Airport, the single most important economic force and trip generator in the region.
- The efficiency of current transit service in the corridor, provided exclusively by bus, is hampered by the same factors that have impaired mobility along the congested roadway network in the corridor.
- With only one current and two planned east-west express bus routes in the corridor, current and potential transit users in the study area would benefit greatly from a higher level of transit service.
- Once the planned expansion of the Dolphin Expressway is completed, there will be essentially no capacity to further expand the roadway network in any substantial way, either for general purpose traffic or exclusive transit lanes, due to the high cost of acquiring property for right-of-way and associated adverse environmental impacts and community disruption.
- In order to meet projected growth and sustain continued economic viability within the corridor and the region, a major investment in transit is needed to meet mobility and accessibility needs.

In a region where high capacity transportation facilities are primarily oriented north-south, the East-West Corridor is Miami-Dade County's most important and heavily traveled east-west route. Much of the growth in recent years has occurred in the western and southwestern portions of the region, including the western portion of the East-West Corridor, which has seen rapid growth in population, households, and employment. The study area currently has more than 195,000 residents in 68,000 households and some 180,500 jobs. Official growth forecasts indicate that this trend will continue with population increasing by 44,000 (23 percent) by the year 2030 and jobs increasing by 60,000 (33 percent).

Several studies have clearly demonstrated the need for public transportation improvements to accommodate the East-West Corridor's substantial population growth, increasing employment and development, and the need for a wider range of mobility options to meet rising east-west travel demand within and through the corridor. Both the Miami-Dade MPO's 2030 Long-Range Transportation Plan (LRTP) and the People's Transportation Plan have designated the East-West Corridor as a priority corridor for extension of Metrorail service. In November 2002, the voters of Miami-Dade County approved the People's Transportation Plan and a one-half percent sales tax increase to fund the plan. The PTP includes an extension of Metrorail service from the MIC to FIU. The extension of Metrorail service from the MIC to FIU also is designated as a Priority I project in the MPO's financially constrained 2030 LRTP, approved by the MPO Governing Board in December 2004.

III. Alternatives

The transportation alternatives proposed for consideration in this study area include:

No-Build Alternative—The No-Build Alternative includes the existing street, highway, and transit facilities and services and those transit and highway improvements planned and programmed to be implemented by

2030. The No-Build Alternative provides the baseline for establishing the environmental impacts of the proposed alternatives, and assumes the following projects will be completed:

- Extension of the Stage 1 Metrorail Line from the existing Earlington Heights station to a new station at the MIC.
- MIC–MIA Connector fixed guideway people mover system linking MIA and the MIC.
- Increase in Tri-Rail service frequencies to 20-minute headways during peak periods between MIA and Mangonia Park Station in Palm Beach County.

Transportation System Management (TSM) Alternative—The TSM Alternative is defined as lower cost, operationally-oriented improvements to address the transportation problems identified in the corridor. It also provides a baseline against which the effectiveness of the Build Alternative is evaluated and rated for federal New Starts funding, and would include the following:

- Express, limited-stop bus service along the Dolphin Expressway.
- Enhanced bus service on major east-west arterials.
- Park-and-ride facilities at the same locations as the Build Alternative and sized to meet the forecasted demand.
- Enhanced bus stations at the same locations as the Build Alternative.
- The TSM Alternative also includes all improvements identified under the No-Build Alternative.

Build Alternative—The Build Alternative consists of an approximately 10.1 mile, two-track, elevated, heavy rail extension of Metrorail from the MIC at MIA west to FIU, with proposed stations at the NW 57th Avenue/Blue Lagoon, NW 72nd Ave./Palmetto Expressway, NW 87th Avenue, NW 97th Avenue, NW 107th Avenue, and FIU. The LPA that was developed as a result of the initial environmental studies prepared in the 1990's continues to form the basis of the current SDEIS effort. The Build Alternative connects FIU with the MIC at MIA by following the Florida Turnpike northward from FIU and then the Dolphin Expressway eastward to the MIC. It would be developed as a direct extension of the existing Metrorail system. Several land use and development changes have occurred since the previous studies that require some minor refinement of the alignment and station location options. These refinements are being developed in consultation with state and local agencies and the surrounding community. The intent of these refinements to the alternative is to stay generally within the original corridor while looking to improvements that would enhance the ridership potential of the line, reduce costs where feasible, and further mitigate environmental impacts.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and MDT will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the SDEIS. Environmental and social impacts proposed for analysis include land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocation of existing uses; historic resources; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; safety and security; utilities; traffic and transportation; natural areas; threatened and endangered species; ground water and potentially contaminated sites; wetlands; and floodplain areas. The SDEIS will also evaluate secondary and cumulative impacts. Potential impacts will be assessed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

V. Public Involvement

A comprehensive public involvement program has been developed and a public and agency involvement Coordination Plan will be created. The program includes a project Web site (*http://www.miamidade.gov/transit*); outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the study; a public hearing on release of the supplemental draft environmental impact statement (SDEIS); establishment of walk-in project offices in the corridor; and development and distribution of project newsletters.

VI. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, MDT may seek § 5309 New Starts funding for the project and will therefore be subject to the FTA New Starts regulation (49 CFR part 611). This New Starts regulation requires the submission of certain specified information to FTA to support a MDT request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final Supplemental Environmental Impact Statement.

Issued On: May 17, 2006.

Yvette G. Taylor,

FTA Regional Administrator.

[FR Doc. E6–7865 Filed 5–23–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22176; Notice 2]

Nissan Motor Company and Nissan North America, Denial of Petition for Decision of Inconsequential Noncompliance

Nissan Motor Company, Ltd. and Nissan North America, Inc. (Nissan) have determined that certain vehicles that they produced in 2004 through 2005 do not comply with S9.2.2 of 49 CFR 571.225, Federal Motor Vehicle Safety Standard (FMVSS) No. 225, "Child restraint anchorage systems." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Nissan has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on August 25, 2005 in the **Federal Register** (70 FR 49972). NHTSA received a comment from Advocates for Highway and Auto Safety (Advocates) as well as a comment by Nissan responding to Advocates' comment.

Affected are a total of approximately 24,655 model year (MY) 2005 Infiniti FX vehicles manufactured from September 1, 2004 to July 13, 2005, and 65,361 MY 2005 Nissan Maxima vehicles manufactured from September 1, 2004 to July 11, 2005. There was also mention in the **Federal Register** notice of 167

MY 2005 Infiniti Q45 vehicles with rear power seats manufactured from September 1, 2004 to June 30, 2005; however, this reference was in error and the Infiniti Q45 vehicles are not the subject of this petition.

A child restraint anchorage system consists of two lower anchorages and a tether anchorage that can be used to attach a child restraint system to a vehicle. These systems are sometimes referred to as LATCH (Lower Anchorages and Tethers for Children) systems and are intended to help ensure proper installation of child restraint systems.

S9.2.2 of FMVSS No. 225 requires:

> With adjustable seats adjusted as described in S9.2.3, each lower anchorage bar shall be located so that a vertical transverse plane tangent to the front surface of the bar is (a) Not more than 70 mm behind the corresponding point Z of the CRF [child restraint fixture], measured parallel to the bottom surface of the CRF and in a vertical longitudinal plane, while the CRF is pressed against the seat back by the rearward application of a horizontal force of 100 N at point A on the CRF.

The lower anchorage bars in the subject vehicles do not comply with this requirement. Nissan states that tests performed for NHTSA by MGA Research revealed a noncompliance in a 2005 Infiniti FX, and Nissan subsequently investigated its other vehicle models on this issue.

Nissan believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. However, NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. The Agency stated in the March 5, 1999 final rule (64 FR 10786) that,

> This final rule is being issued because the full effectiveness of child restraint systems is not being realized. The reasons for this include design features affecting the compatibility of child restraints and both vehicle seats and vehicle seat belt systems. By requiring an easy-to-use anchorage system that is independent of the vehicle seat belts, this final rule makes possible more effective child restraint installation and will thereby increase child restraint effectiveness and child safety. 64 FR 10786.

The language of the March 5, 1999 final rule clearly indicates that ease of use is consequential to the proper installation of child restraints and ultimately the safety of the child passenger. The ease of use for the child restraint anchorage system is directly impacted by the rearward location or depth of the anchorage bars.

In its petition, Nissan first states that the vehicles comply with the alternative requirements S15 of FMVSS No. 225, which were available as a compliance option until September 1, 2004. Advocates makes the comment that this is irrelevant because it was not a legal method of compliance at the time the vehicles were built, which is correct.

When the agency established the safety standard on March 5, 1999 (64 FR 10786), the final rule did not permit the International Organization for Standardization (ISO) compliance option. The agency received petitions for reconsideration of the final rule from the Alliance of Automobile Manufacturers (Alliance), as well as others. On August 31, 1999 (64 FR 47568), the agency allowed manufacturers to comply, as an option, with the requirements set forth in a draft standard issued by the ISO group until September 1, 2002. This provision was later extended to September 1, 2004.

The ISO requirements permitted lower anchorage strength that was less than that required by the March 5, 1999 final rule and did not specify a horizontal force to be applied to the CRF when measuring the distance between Point Z and the anchorage bar. The reasons for permitting this interim compliance option are discussed in the August 31, 1999 notice:

> These amendments are made to provide manufacturers lead time to develop lower anchorages that meet the strength requirements of our standard. Lower anchorages meeting the draft ISO requirements will provide an improved means of attaching child restraints. While the 11,000 N strength requirement is preferable to the ISO 8,000 N requirement, we are balancing the benefits associated with lower anchorages meeting the draft ISO requirements in the short run against the possibility of there being no improved means of attaching child restraints. Lower anchorages meeting the draft ISO requirements will still provide an improvement to parents who have difficulty attaching a child restraint correctly in a vehicle or whose vehicle seats are incompatible with child restraints. In the short term, we are adopting an alternative allowing compliance with a lesser requirement as a practicable temporary approach that would reap benefits not otherwise obtainable during the interim. The agency is thus amending the standard to enable manufacturers to provide child restraint anchorage systems in vehicles as quickly as possible. 64 FR 47570.

Thus, the ISO provisions and specifically S15 were permitted as an interim step to provide some improvements to the public as quickly as possible while balancing the testing and lead time necessary for manufacturers to provide a system that complies with the regulation.

Prior to September 1, 2004, Nissan was able to comply with the S15 requirement for anchorage bar depth by applying a horizontal force that exceeded the 100 N requirement of S9.2.2, since S15 did not specify a limit on horizontal force. NHTSA's compliance test data for the 2005 Infiniti FX35 show that it took a horizontal force of 213 N to achieve the 70 mm distance, more than twice the 100 N horizontal application force limit in the current standard.

The March 5, 1999 final rule specified a horizontal force application of 5 N at point A on the CRF for determining the distance between point Z and the anchorage bars. A force application was specified to obtain an objective measurement. The June 27, 2003 response to petitions for reconsideration (68 FR 38208) revised the horizontal application force specified in S9.2.2 to 100 N. General Motors had requested that the 5 N requirement be deleted or increased; the Alliance requested deletion or an increase to 150 N. In the June 27, 2003 notice the agency discussed the decision to increase the force limit to 100 N.

> On reconsideration, while a force specification is needed for objectivity, increasing the force level will result in a larger area provided to vehicle manufacturers for installing the LATCH lower anchorages, which facilitates the installation of the anchorages. We estimate that a 5th percentile adult female would be able to exert a 100 N force pushing back on a child restraint without problem. 68 FR 38214.

The 213 N force necessary to achieve a measurement of 70 mm in the Infiniti FX35 far exceeds what was determined to be reasonable (100 N) in the June 27, 2003 notice. This means that more than twice the permitted force would be needed to achieve a distance of 70 mm or less between point Z and the anchorage bars.

Second, Nissan states that the extent of the noncompliance is not significant. Specifically, it says:

> The left and right lower anchorages in the MY 2005 FX vehicle were located 76 mm and 83 mm behind Point Z, respectively, when tested by MGA under the procedures of S9.2.2. During its subsequent investigation using the MGA CRF, Nissan measured the lower anchorage location in the left and right rear seats in five other FX vehicles. The average distance from Point Z was 78 mm, and the greatest distance was 81 mm. The average distance for the four 5-seat Nissan Maxima vehicles tested was 76 mm, and the greatest distance was 81 mm. The average distance for the three 4-seat Maxima vehicles tested was 92 mm, and the greatest distance was 94 mm. At most, this reflects a distance of less than an inch beyond the distance specified in the standard, and the difference

is less than one-half of an inch for the FX and the 5-seat Maxima models.

Advocates commented that the safety issue is not the actual distance of the noncompliance but rather the effect of this noncompliance on safety. It states that even a "noncompliance that involves a minimal deviation from the standard can be critical if it prevents the proper installation of child restraints in vehicles." NHTSA agrees. The 70 mm maximum distance between point Z on the fixture and the front of the anchorage bar was established to ensure easy installation of a child restraint system (CRS) and to reduce the likelihood of an improperly installed CRS. Locating the anchorage bars at this distance or less ensures that the anchorage bars are accessible and easy to use.

In the March 5, 1999 final rule (64 FR 10786), the agency increased the anchorage bar location to the current 70 mm maximum distance after the ISO working group increased its limit from 50 mm to 70 mm. In requiring the 70 mm limit, NHTSA stated,

> * * * NHTSA believes that most vehicles, except those with highly contoured seats, will have the bars 50 to 60 mm from the CRF. At this distance the agency believes that the bars would generally be visible at the seat bight without compressing the seat cushion or seat back.

Permitting lower anchorages at distances beyond 70 mm affects the ease of installation and proper installation of LATCH equipped child restraint systems, and compromises the benefits realized by a compliant child restraint anchorage system. The measurements of the subject lower anchorages exceed the requirements of S9.2.2 by up to 24 mm. Therefore, NHTSA finds that the extent of the noncompliance is significant.

Third, Nissan conducted a survey program to assess the ease of installing CRSs in these vehicles, and set out the results as an attachment to its petition. Nissan points out that there were few unsuccessful attempts and says that the results "clearly demonstrate that the noncompliance * * * does not adversely affect the ease of installation of the CRSs * * *." Nissan also indicates that the latchings were accomplished in an average time of between 22 seconds and 39 seconds.

Advocates calls into question the validity of Nissan's survey conclusions, based on Nissan's use of its employees as testers and its dismissal of several failures because they were by one installer. NHTSA also finds Nissan's conclusions to be questionable.

Survey participants were women employees of Nissan. No description is given of the women involved in the study except that they "* * * included some relatively small women and some mothers * * *." Nissan indicates that "These results show that, despite the noncompliance, parents and other consumers in the real world have very little difficulty installing CRSs in the vehicles covered by this petition."

Nissan made no attempt to obtain a sample that is representative of the general population but indicates that its results are generalizable. In the real world, parents include men, who were not included in this study. It seems by selection of a sample consisting of all women, Nissan assumes women would have more difficulty than men in installing CRSs to the lower anchor in the vehicle seat or that women would be more likely to install a CRS. But these may be incorrect assumptions. Men also install CRSs and there may be male physical attributes that may affect the ability of males to connect CRSs to the anchor. For example, in the tight space in the bight of the vehicle seat where the anchors are located, men—generally having larger hands than women—may have a more difficult time locating the anchor and connecting to it.

Further, each of the twelve installers had the benefit of a short demonstration on how each of the CRS hardware types was to be installed for the vehicles in question. The installers were also shown a diagram from the owner's manual that illustrated the location of the anchorages in the seat. They were then shown a sample of a lower anchorage removed from a seat so that they would know what to look for in the seat. NHTSA is not convinced that this survey is predictive of likely real-world problems that would be encountered by members of the general public who were not given similar, detailed instructions immediately prior to attempting to install a CRS. Also, even with this detailed briefing, 20 of the 336 installation attempts by this group were unsuccessful.

It should be noted that Nissan did not include a control vehicle (with lower anchors that comply with the standard) in their study for comparison purposes. Also, the sample size is very small (12 participants, and one participant's results were discounted). The ability to generalize the results of this study to the population at large is very doubtful.

In addition, NHTSA finds no basis for dismissing several failures as anomalous because they were by a single installer. Nissan reports that 20 (1.9 %) attempts failed during the trials but adds that one participant accounted for 12 of the 20 failed attempts to latch the child restraint to the anchor and indicates its belief that her performance was "* * * anomalous and not predictive of the general public in installing CRSs * * *." Nissan suggests that if the results from installer number 9 are discarded, then overall there would only be 8 unsuccessful attempts (0.3% for the FX, 0.0 % for the 5-seat Maxima, and 2.3% for the 4-seat Maxima) to latch a child restraint to the anchor. However, installer number 9 did not fail across the board. She accomplished 72 successful child restraint installations out of 84 attempts. Installer number 9 may represent a segment of the distribution of child restraint installing capabilities of the general public. In other words, there may be a significant number of number 9s in the general population. The sample, as stated earlier, is very small (and biased), and it could be the case that a sample of this size might have one or more data points that appear to be outliers but may prove not to be if a larger sample were taken. One other installer in Nissan's survey (installer number 8) had 4 unsuccessful installations and was retained in the study's assessment.

Also, it should be noted that Nissan apparently did not obtain feedback from the participants concerning the unsuccessful installation attempts so it is impossible to know if the location of the anchor had any bearing on the installers' ability to attach the CRS to the anchor.

For these reasons, NHTSA is not convinced that the results of this survey program make the case that this noncompliance does not have an effect on safety.

Fourth, Nissan dismissed two complaints that were filed with NHTSA's Office of Defects Investigation in January of 2004. Nissan contacted the complainants eighteen months after the complaints were filed and determined one no longer had their notes and the second may have been installed using an improper procedure. NHTSA does not agree with Nissan that these complaints should be deemed irrelevant. Both complaints were filed by certified child safety technicians. Both complainants, as part of their jobs, installed child restraints in numerous other vehicles. NHTSA also contacted both complainants and determined it was their professional opinion at the time the complaint was registered that installation of child restraints into these vehicles was very difficult and worthy of sending a complaint to the agency.

These complaints did not account for NHTSA's decision to test the Infiniti FX. NHTSA reviews vehicles continuously and identified the Infiniti FX as a test vehicle based on preliminary

inspections that indicated a possible problem with the anchorage bar depth. After the noncompliance was determined to exist with the Infiniti FX, a check of the complaint database uncovered these complaints. The complaints are consistent with the test results that indicate the anchorage bars are too deep in the seat bight for easy installation.

Fifth, Nissan states that "other vehicle characteristics in these models compensate for the lower anchorage location to allow for ease of installation," including seat foam that compresses easily and suppleness of leather seats. Nissan has presented no objective data to support this assertion, and it is contradicted by NHTSA test data for the Infiniti FX35, which indicate that over twice the allowable horizontal load must be placed on the CRF to compress the foam before the 70 mm distance can be achieved.

In conclusion, the fact that LATCH anchorages in some Nissan vehicles are at between 6 and 24 mm deeper in the seat bight than allowed by FMVSS No. 225 is consequential to safety. These LATCH anchorages may not be readily accessible and may not enable proper anchoring of the CRS to the vehicle, particularly since force considerably in excess of that specified in the standard would have to be exerted in order for the installer to make proper use of the anchorages in some circumstances. Moreover, since the anchorages are located deeper in the seat bight, improper anchoring of the CRS to other vehicle seat components such as wires and frame elements is more probable. The consequentiality may be significantly increased if a CRS has rigid attachments that are designed to attach to a vehicle anchorage located within the 70 mm distance. The agency believes that this noncompliance could well result in children riding in child restraint systems that are improperly installed and, therefore, do not provide the protection these systems are designed to provide. This is the danger the rule was intended to prevent.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby denied.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: May 18, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–7866 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: PHMSA and the Federal Railroad Administration (FRA) invite interested persons to participate in a public meeting to address the safe transportation of hazardous materials in railroad tank cars. PHMSA and FRA are initiating a comprehensive review of design and operational factors that affect rail tank car safety.

DATES: *Public meeting:* May 31–June 1, 2006, starting at 9 a.m. and ending at 5 p.m. both days.

ADDRESS: *Public meeting:* The Hotel George. 15 E Street, NW., Washington, DC 20001.

Oral presentations: Any person wishing to present an oral statement should notify Lucinda Henriksen, by telephone, e-mail, or in writing, at least four business days before the date of the public meeting. Oral statements will be limited to 15 minutes. For information on facilities or services for persons with disabilities or to request special assistance at the meetings, contact Ms. Henriksen by telephone or e-mail as soon as possible.

FOR FURTHER INFORMATION CONTACT: Lucinda Henriksen (*Lucinda.Henriksen@dot.gov*), Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Washington, DC 20590 (202–493–1345) or William S. Schoonover (*William.Schoonover@dot.gov*), Staff Director, Hazardous Materials Division, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590, (202–493–6050).

SUPPLEMENTARY INFORMATION: The Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*, as amended by section 1711 of the Homeland Security Act of 2002, Public Law 107–296 and Title VII of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU)) authorizes the Secretary of the Department of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." The Secretary has delegated this authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA).

The Hazardous Materials Regulations (HMR: 49 CFR parts 171–180) promulgated by PHMSA under the mandate in section 5103(b) govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate. The Hazardous Materials Regulations—or HMR—are designed to achieve three goals:

(1) To ensure that hazardous materials are packaged and handled safely during transportation;

(2) To provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and

(3) To minimize the consequences of an incident should one occur.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard and reducing the probability and quantity of a hazardous material release. We collect and analyze data on hazardous materials—incidents, regulatory actions, and enforcement activity—to determine the safety and security risks associated with the transportation of hazardous materials and the best ways to mitigate those risks. Under the HMR, hazardous materials are categorized by analysis and experience into hazard classes and packing groups based upon the risks they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials, and require a shipper to communicate the material's hazards through use of shipping papers, package marking and labeling, and vehicle placarding. The HMR also require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported. Finally, the HMR mandate training requirements for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce. The HMR also include operational requirements applicable to each mode of transportation.

The Secretary of Transportation also has authority over all areas of railroad

safety (49 U.S.C. 20101 *et seq.*), and has delegated this authority to FRA. FRA has issued a comprehensive set of Federal regulations governing the safety of all facets of freight and passenger railroad operations (49 CFR parts 200–244). FRA inspects railroads and shippers for compliance with both FRA and PHMSA regulations. FRA also conducts research and development to enhance railroad safety.

Railroads carry over 1.7 million shipments of hazardous materials annually, including millions of tons of explosive, poisonous, corrosive, flammable and radioactive materials. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage.

In the last several years, there have been a number of rail tank car accidents in which the car was breached and product lost on the ground or into the atmosphere. Of particular concern have been accidents involving materials that are poisonous, or toxic, by inhalation (TIH materials). For example, on January 18, 2002, in Minot, ND, one person was killed and 11 more were seriously injured when a Canadian Pacific Railway train derailed. Five tank cars carrying anhydrous ammonia catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. On June 28, 2004, in Macdona, TX, three people were killed and 41 were seriously injured when a Union Pacific freight train struck a BNSF freight train. The collision resulted in the breach of a tank car and a release of chlorine, a poisonous gas. Property damage and environmental clean-up costs exceeded $7 million. On January 6, 2005, in Graniteville, SC, nine people were killed and about 75 were seriously injured when Norfolk Southern Railway train collided with a standing train, and a tank car carrying chlorine was breached. Total damages exceed $6.9 million. In each of these incidents, the primary causative factor was railroad operations, a failed tank structure, or a combination of the two. Only with a full understanding of what happened can the necessary steps for prevention and mitigation be identified and implemented.

PHMSA and the Federal Railroad Administration (FRA) are initiating a comprehensive review of design and operational factors that affect rail tank car safety. The two agencies will utilize a risk management approach to identify ways to enhance the safe transportation of hazardous materials in tank cars, including tank car design, manufacture, and requalification; operational issues such as human factors, track conditions and maintenance, wayside hazard detectors, and signals and train control systems; and emergency response. The review will not consider security issues. PHMSA and FRA have been working closely with the Transportation Security Administration on developing proposed regulations to enhance the security of rail shipments of hazardous materials; these regulatory proposals should be issued for public comment in the near future.

The public safety meeting now scheduled for May 31–June 1 is intended to kick-off the public involvement in this on-going effort within the Department. PHMSA and FRA are primarily looking to this meeting to surface issues and prioritize them. In addition, PHMSA and FRA will discuss the need for additional public forums and their time and place. Persons wishing to make statements will be afforded an opportunity to do so and a transcript—to be made available to the public—will be taken.

Issued in Washington, DC on May 18, 2006, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

FR Doc. E6–7863 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–06–24044; Notice 2]

Pipeline Safety: Grant of Waiver; Dominion Transmission, Inc.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Grant of Waiver; Dominion Transmission, Inc.

SUMMARY: Dominion Transmission, Inc. (DTI) requested a waiver of compliance from requirements for pipelines constructed after March 31, 2000. This waiver will allow DTI to use the most recent, 2006 National Fire Protection Association's (NFPA) 59A, "Standard for Production, Storage, and Handling of Liquefied Natural Gas" and comply with PHMSA's liquefied natural gas (LNG) facility safety regulations.

SUPPLEMENTARY INFORMATION:

Background

DTI requested a waiver from compliance of the regulatory requirements at 49 CFR 193.2301. This regulation requires each LNG facility constructed after March 31, 2000, to comply with 49 CFR part 193 and standard 59A (NFPA 59A). NFPA 59A requires that welded containers designed for not more than 15 pounds per square inch gauge comply with the 1990 Eighth Edition, of the American Petroleum Institute standard 620 (API 620), "Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q)." API 620 requires that examinations be performed using radiography to detect the type of flaws most susceptible in the design and construction of large welded low-pressure storage tanks.

DTI is proposing to use the 2006 Tenth Edition, Addendum 1, of API 620, instead of the currently used, 1990 Eighth Edition. This will allow ultrasonic examination as well as radiography as an acceptable alternative non-destructive testing method. The ultrasonic examination consists of full semi-automated and manual examination using shear wave probes, and volumetric examination using a combination of creep wave probes and focused angled longitudinal wave probes.

Findings

PHMSA considered DTI's waiver request and published a notice inviting interested persons to comment on whether a waiver should be granted (71 FR 13895; March 17, 2006). PHMSA received one comment in support of the waiver from the American Gas Association (AGA). AGA supports DTI's request for a waiver from 49 CFR 193.2301 and is confident that the 2006 Tenth Edition of API 620 will not reduce the integrity of the installation of large welded low-pressure storage tanks at LNG facilities.

Grant of Waiver

In its May 2005, Report on Comments, the NFPA 59A Committee "accepted in principle" the latest edition of API 620, Tenth Edition, Addendum 1. The Tenth Edition, Addendum 1, of API 620 adds ultrasonic examination as an acceptable method of examination. The proposed wording of the Tenth Edition, Addendum 1, of API 620 deletes "radiographic" inspection and replaces it with "complete" examination. In the Tenth Edition of API 620, "complete" examination is defined as radiographic or ultrasonic examination.

For the reasons explained above and in the Notice of March 17, 2006,

PHMSA finds that the requested waiver is not inconsistent with pipeline safety and that an equivalent level of safety can be achieved. Therefore, DTI's request for waiver of compliance with § 193.2301 is granted for its LNG facility in Lusby, MD.

Authority: 49 U.S.C. 60118 (c) and 49 CFR 1.53.

Issued in Washington, DC on May 18, 2006.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. E6–7955 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 18, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 23, 2006 to be assured of consideration.

Community Development Financial Institutions Program Fund (CDFI)

OMB Number: 1559–0014.

Type of Review: Extension.

Title: New Markets Tax Credit (NMTC) Program—Community Development, Entity (CDE) Certification Application.

Form: CDFI Form 0019.

Description: The purpose of the NMTC Program is to provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in new private capital in low income communities. Applicants must be a CDE to apply for allocation.

Respondents: Businesses and other for-profit and non-profit institutions, and State, local or tribal governments.

Estimated Total Burden Hours: 2,500 hours.

Clearance Officer: Ashanti McCallum, Community Development Financial Institutions Program Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. (202) 622–9018.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–7921 Filed 5–23–06; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency Agency

Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Investment Securities (12 CFR part 1)."

DATES: You should submit written comments by July 24, 2006.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0205, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0205, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR part 1).

OMB Number: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.4(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 18, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–7902 Filed 5–23–06; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted in Philadelphia, PA. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 22, Friday, June 23, and Saturday, June 24, 2006.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 (toll-free), or 954–423–7977 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Thursday, June 22, 2006 from 1:30 p.m. to 4:30 p.m. ET, Friday, June 23, 2006 from 8 a.m. to 12 p.m. and from 1 p.m. to 4:30 p.m. ET at the Internal Revenue Service office, 600 Arch Street, and Saturday, June 24, 2006 from 8 a.m. to 11:30 a.m. ET at the Holiday Inn-Historic District, 400 Arch Street, Philadelphia, PA 19106. For information or to confirm attendance, notification of intent to attend the meeting must be made with Inez De Jesus. Ms. De Jesus may be reached at 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: May 18, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–7971 Filed 5–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 20, 2006 from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, June 20, 2006, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 18, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–7972 Filed 5–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 20, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, June 20, 2006 from 9 a.m. ET to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–488–2085, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 19, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–7973 Filed 5–23–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 24, 2006

Part II

Department of Housing and Urban Development

24 CFR Part 570

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4556–F–03]

RIN 2506–AC04

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: On December 23, 2005, HUD published an interim rule implementing certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, the interim rule prohibited state and local governments from using CDBG funds for "job-pirating" activities that are likely to result in significant job loss. The rule also applied to section 108 loan guarantees and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with section 108 loan guarantees and CDBG funding. This final rule follows publication of the December 23, 2005, interim rule, and makes no changes at this final rule stage.

DATES: *Effective Date:* June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone (202) 708–3587 (this is not a toll-free number).

In addition, program participants may contact their respective program offices by calling the applicable telephone number listed below (these telephone numbers are not toll-free).

For State CDBG, HUD-administered Small Cities, and Insular recipients: Michael Sowell, Community Planning and Development Specialist, State and Small Cities Division, (202) 708–1322.

For Entitlement Communities: Stan Gimont, Director, Entitlement Communities Division, (202) 708–1577.

For Section 108 program participants: Paul Webster, Director, Financial Management Division, (202) 708–1871.

For Economic Development Initiative (EDI) and Brownfields Economic Development Initiative (BEDI) program participants: William Seedyke, EDI and BEDI Program Coordinator, Grants Management Division, (202) 708–3484.

Hearing- or speech-impaired individuals may access any of the telephone numbers listed in this section by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled "Community Development Block Grants"). As used in this final rule, the term "CDBG funding" or reference to CDBG programs means, in addition to the Entitlement and State CDBG programs, those programs covered by the part 570 regulations (*e.g.*, section 108 loan guarantees, the Economic Development Initiative, the Brownfields Economic Development Initiative, HUD-administered Small Cities, and the Insular CDBG program). This final rule does not apply to the Indian CDBG program.

Section 105 of the 1974 HCD Act (42 U.S.C. 5305) was amended by section 588 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Title V of the Fiscal Year 1999 HUD Appropriations Act, Pub. L. 105–276, approved October 21, 1998). Specifically, section 105 was amended to add a subsection (h) entitled "Prohibition on Use of Assistance for Employment Relocation Activities." This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another if the relocation is likely to result in a significant job loss.

Subsection 105(h) provides as follows:

> (h) Prohibition on Use of Assistance for Employment Relocation Activities.—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from [one] area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

On October 24, 2000 (65 FR 63756), HUD published a proposed rule to implement section 588 of QHWRA. The October 24, 2000, proposed rule proposed to prohibit state and local governments from using CDBG funds for job-pirating activities. Job pirating was defined as the act of one community luring a business, and the jobs that would accompany it, from another community that could have significant impact on the economic viability of the latter community. HUD received 32 public comments on the proposed rule.

On December 23, 2005 (70 FR 76362), HUD published an interim rule that took into consideration the public comments received on the proposed rule. In response to those public comments, the interim rule made several changes to the proposed rule, including (1) the "*de minimis*" job loss definition; (2) the state designation of applicable Labor Market Area (LMA); (3) the time limits on anti-piracy requirements; (4) the streamlining of reporting requirements; and (5) the definition of "directly assist." In addition, the interim rule also provided the public with an additional opportunity to comment on the regulatory job-pirating provisions in general and on changes made to the rule based on the earlier comments.

II. This Final Rule

This final rule follows publication of the December 23, 2005, interim rule, and takes into consideration public comments received on the interim rule. HUD received one comment on the interim rule. After careful consideration of the public comment, HUD has decided to adopt the December 23, 2005, interim rule as final without change.

The public comment period for this interim rule closed on February 23, 2006. As noted, HUD received one public comment from a community development commission. The commenter wrote that the interim rule limits the ability of public entities and discourages private businesses from fostering development through public/private partnerships. Additionally, the commenter wrote that the definition of Local Market Area (LMA) is not the most logical tool to use in evaluating market area job loss, as LMAs can be various sizes and the definition may not accurately account for a variety of market factors and commuting patterns. Also, the commenter wrote that HUD should explicitly exclude national and large retail operations from the rule's provisions. The commenter stated that the nature of such retail operations are driven by consumer patterns not likely associated with market forces beyond the immediate proximity of the retail outlets. The commenter also stated that job relocation is likely to be statistically insignificant because the personnel for such operations are usually hired from the area in which the outlet is located.

After careful consideration of the public comment, HUD has chosen not to make any changes to the rule. HUD does not agree that the interim rule, if implemented, would impede the public

and private sectors from partnering with each other. The rule's principal function is to prohibit CDBG funds from directly assisting a business in a relocation of its operations. CDBG funds may be used for many other public-private partnership scenarios. Furthermore, HUD does not agree that LMAs are not adequate tools to use in evaluating job loss. As noted in the interim rule's preamble, LMAs include Metropolitan Statistical Areas (MSAs) and Metropolitan Divisions, which both take into consideration commuting patterns. Lastly, HUD does not agree that large, national retail operations should be excluded from the rule. HUD already considered the impact that this rule would have on these operations, and, as noted in the interim rule's preamble, HUD made necessary adjustments to the interim rule. For example, the commenter suggests that recordkeeping requirements would be onerous for large retail operations. However, HUD considered this point and has already streamlined the reporting requirements to only require a certification submission.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0077 for the CDBG Entitlement program, and 2506–0085 for the State CDBG program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage and is applicable to this final rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Additionally, HUD received no comments on its December 23, 2005, interim rule on whether uniform application of requirements on entities of differing sizes often place a disproportionate burden on small businesses. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs covered by this final rule are as follows:

—Community Development Block Grants/Entitlement Grants—14.218;
—Community Development Block Grants/State's program—14.228;
—Community Development Block Grants/Small Cities program—14.219;
—Community Development Block Grants/Brownfields Economic Development Initiative—14.246;
—Community Development Block Grants/Section 108 Loan Guarantees—14.248; and
—Community Development Block Grants/Special Purpose Grants/Insular Areas—14.225.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 570 of Title 24 of the Code of Federal Regulations, adding § 570.210 and § 570.482, and amending § 570.200 and § 570.506, is promulgated as final, without change.

Dated: May 16, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–4796 Filed 5–23–06; 8:45 am]
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Federal Register

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Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant Program; Revision of CDBG Eligibility and National Objective Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4699–F–02]

RIN 2506–AC12

Community Development Block Grant Program; Revision of CDBG Eligibility and National Objective Regulations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Community Development Block Grant (CDBG) program regulations to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories. In addition, this final rule makes changes to CDBG national objectives that relate to brownfields and clarifies regulatory language.

The final rule expands the "slums or blight" national objective criteria to include known and suspected environmental contamination, as well as economic disinvestment, as blighting influences. The rule also expands the definition of "clearance" to include remediation of known or suspected environmental contamination. The rule requires grantees to establish definitions of blighting influences and to retain records to support those definitions. In addition, an area slums or blight designation is required to be redetermined every 10 years for continued qualification. The regulatory amendments include the abatement of asbestos hazards and lead-based paint hazard evaluation and reduction as eligible rehabilitation activities. The final rule eliminates duplicative text concerning the treatment of lead-based paint hazards. Finally, the final rule requires that acquisition or relocation, if undertaken to address slums or blight on a spot basis, must be followed by other eligible activities that eliminate specific conditions of blight or physical decay.

The final rule follows publication of a July 9, 2004, proposed rule and takes into consideration the public comments received on the proposed rule.

On October 22, 1996, the Department published an interim rule, "Community Development Block Grant Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments." This rule also makes final, with no changes, the provisions of that rule, which have been in effect for states on an interim basis since November 21, 1996.

DATES: *Effective Date:* June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Higginbotham, Community Planning and Development Specialist, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000; telephone (202) 708–1322 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of studies mentioned in this rule are available for a fee from HUD User at (800) 245–2691 (a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) (FY1999 Appropriations Act), Congress clarified the eligibility of environmental cleanup and economic development activities under the CDBG program. Section 205 of the FY1999 Appropriations Act stated:

> For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under Title I of the Housing and Community Development Act of 1974 for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act.

On July 9, 2004, HUD published a proposed rule (69 FR 41434) for public comment to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories, as well as make changes to CDBG national objectives that relate to brownfields and clarify regulatory language.

Although cleanup and redevelopment of brownfields can already be accomplished using numerous categories of eligible activities, qualifying such an activity under the existing criteria has often been confusing and problematic. In addition, ambiguity in statutory and regulatory language has made grantees reluctant to use the "slums or blight" national objective to justify brownfields cleanup. To eliminate this ambiguity, HUD proposed to add project-specific assessment and remediation of known or suspected environmentally contaminated sites to the list of eligible activities under §§ 570.201(d) and 570.703(e), which addresses clearance activities. HUD also proposed to expand the "slums or blight" national objective criteria to include known and suspected environmental contamination as blighting influences. The proposed rule stated HUD's intent to accept, as blighting influences, signs of economic disinvestment, such as property abandonment, chronic high turnover rates; or chronic high vacancy rates in occupancy of commercial or industrial buildings; and significant declines in property values.

HUD proposed that grantees be required to establish definitions and retain records to substantiate how the area met the "slums or blight" criteria. Specifically, grantees would be required to define deteriorating or deteriorated buildings or improvements, abandonment of properties, chronic high turnover rates, chronic high vacancy rates, significant declines in property values, abnormally low property values, and environmental contamination. HUD also proposed that at least 33 percent of the properties in the designated area meet one or more of these conditions. Furthermore, HUD proposed the requirement that the "slums or blight" designation for the area be re-determined every 5 years.

In addition, the proposed rule sought to curb the use of acquisition or relocation by itself, when using the spot slums or blight national objective criterion. The proposed rule stated that if acquisition or relocation were undertaken to address the spot slums or blight national objective, it must be a precursor to another eligible activity that directly eliminates the conditions of blight or physical decay.

HUD received 11 comments to the July 9, 2004, proposed rule. Many commenters expressed concern over the proposal to require that at least 33 percent of the properties in a designated area meet the slum/blight definitions. Several commenters also stated that the 5-year designation period was too short. Other commenters were unclear as to what HUD meant in saying that acquisition or relocation must be a precursor to other eligible activities that eliminate specific conditions of blight or physical decay when addressing slums or blight on a spot basis. There were no objections to expanding the definition of "clearance" to include remediation of known or suspected environmental contamination.

II. Differences Between This Final Rule and the July 9, 2004, Proposed Rule

This final rule follows publication of the July 9, 2004, proposed rule, and takes into consideration the public comments received on the proposed rule. The noteworthy differences between this final rule and the July 9, 2004, proposed rule are summarized below. Additional information regarding these changes is provided in the discussion of the public comments in sections III through VI of this preamble.

1. *Requirement that 33 percent of properties in a slum/blight designated area must experience one or more of the conditions in the expanded list of slum/blight national objective criteria.* In response to significant public comment on this issue, this final rule revises the percentage of properties that must meet slum and blight conditions. The final rule reduces the percentage to the 25 percent threshold, which is consistent with the standard currently in place.

2. *Requirement that an area be re-determined to be a "slums or blight" area every 5 years for continued qualification.* This final rule revises the period of time between re-determination of "slums or blight" in response to several commenters' observation that 5 years is not enough time to remediate a blighted area. The final rule changes the re-designation period to 10 years.

3. *Technical correction in text at § 570.703(e).* In order to make the text at § 570.703(e) more consistent with the proposed text found at § 570.201(d), the final rule will change the subparagraph to read "Clearance, demolition, and removal, including movement of structures to other sites and remediation of properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205."

III. Discussion of Public Comments Received on the July 9, 2004, Proposed Rule

The public comment period on the July 9, 2004, proposed rule closed on September 7, 2004. HUD received 11 comments. Commenters included five trade associations, five units of local government, and a bank. The summary of comments that follows presents the major issues and questions raised by the public commenters on the proposed rule.

The summary of public comments is organized as follows: Section IV of this summary discusses the public comments regarding changes to the national objective criteria; section V discusses the public comments regarding CDBG entitlement program-eligible activities; section VI discusses the public comments on national objective standards for addressing slums or blight on a spot basis; section VII discusses the public comments on additional reporting in the Integrated Disbursement & Information System (IDIS); and section VIII presents miscellaneous public comments.

IV. Comments on Changes to National Objective Criteria

A. Comments Regarding the Requirement That at Least 33 Percent of the Properties Throughout the Area Meet Certain Qualifying Conditions

Comment: This proposed requirement is counterproductive and will have an adverse impact on designation of slum/blight areas to receive CDBG assistance. The comments stated that a small percentage of deteriorated and/or abandoned properties along with other factors could cause blighting conditions in an area, contributing to the area's downward spiral. They cautioned that the increase would condemn many areas to continued deterioration until the threshold is reached for assistance under the CDBG program. One commenter questioned how the 33 percent standard is considered met and requested that HUD clarify what methodology grantees should use to determine whether a brownfields-related project activity meets the percentage standard.

Another commenter cautioned that increasing the threshold would prevent entitlements from proactively addressing areas on the fringe of disinvestment before they spiral downward while simultaneously being encouraged to cite violations on more buildings. One commenter suggested it is reasonable to assume that if 25 percent of properties in an area met one or more of these conditions, there would already be a significant disincentive to investment. Yet another commenter opposed the change, stating that the current definition was overly narrow.

HUD's Response: HUD believes that the expansion of the "slums or blight" national objective to recognize physical deterioration of improvements on private property and other economic disinvestment as blighting influences would make it easier for grantees to reach the proposed 33 percent threshold. Nevertheless, the Department acknowledges that there was universal opposition among commenters to the proposal to increase the threshold for the percentage of blighted properties in the delineated area from 25 percent to 33 percent. The Department also gave serious consideration to the concerns of grantees that the higher threshold might cause blighted areas to slip further into decline before the cause is addressed. Therefore, HUD has decided to allow the threshold to remain at 25 percent.

The methodology for determining compliance will change somewhat in that each grantee will now be required to establish its own definitions for the newly enumerated blighting conditions or influences, retain records to substantiate how the area meets the slum/blight criteria, and re-determine every 10 years whether the area still meets the regulatory criteria; however, the flexibility that grantees will have in defining deterioration will make it much easier to meet the national objective. To make it even easier to make that determination, the final rule refers more generally to buildings and "properties" rather than just buildings, because a parcel could contain buildings or be vacant.

Grantees should note that the final rule establishes the 25 percent threshold as a regulatory requirement. In the past, the percent threshold existed as a policy determination in the State and Entitlement Guides to Eligibility and National Objectives. The 25 percent threshold was created to answer grantees' confusion concerning how many buildings in an area had to be deteriorated to satisfy the requirement of §§ 570.483(c)(1)(ii) and 570.208(b)(1)(ii) that a "substantial" number be deteriorated.

B. Comments Regarding Proposal That Would Require Grantees To Redesignate Blighted Areas Every 5 Years

Comment: Five years is not enough time to begin and complete a redevelopment project. Nine commenters stated that the 5-year period for redesignation is too short. These commenters suggested time frames from 10 years to 40 years as being more appropriate. Seven commenters cited as reasons for requiring a longer redesignation period the length of time needed to remediate blighted properties or redevelop a blighted area. One commenter also cited the administrative burden of frequent redesignations.

HUD's Response: The Department's original intent in requiring a redetermination every 5 years was to make it easier for grantees to coincide their redetermination process with the Consolidated Planning process. However, HUD agrees with the

commenters that expressed concern that a blighted area may not *substantially* change in such a short period of time. However, HUD disagrees with the statements of some commenters that it could take up to 40 years to feel the effects of a project. Neighborhood growth and decay would suggest that a grantee use caution in applying decades-old data to justify CDBG expenditures. In addition, the Department's focus on performance and outcomes in its grant programs necessitate a sooner rather than later review of the impact of CDBG grant funds in assisted areas. HUD has determined that a 10-year redetermination process is a reasonable compromise.

Areas designated less than 10 years prior to the effective date of the final rule would be required to be redetermined on the 10-year anniversary of the original designation using the criteria in effect at the time of the redetermination. Any area designated more than 10 years prior to the effective date of the final rule must be redetermined to be blighted before any additional funds are obligated for new or existing activities.

Comment: "Since the classification of a "blighted area" is derived from state law, HUD should also use state law in determining how often a "blighted area" requires reassessment and subsequently, reclassification." This commenter stated that under state law, time frames of 20 years to 40 years are not uncommon and that 5 years is an unreasonably short period of time. The commenter also stated, "It often takes years to determine and remediate brownfield contaminated sites. And, as long as it takes for grantees to address environmental contamination, it takes even more time to secure funding," often from more than one source.

Another commenter stated that "Many county entitlements survey hundreds of thousands of structures to identify blighted areas, a valuable but burdensome process. Many counties rely on census data and data collected by other federal agencies that are not released as often as every 5 years or that lag in their release dates. Re-determining slums and blighted areas every 5 years would add little value to county programs at a high expense to scar[c]e [sic] HUD resources." One commenter stated that the requirement would be an added regulatory and paperwork burden, and another commenter stated that HUD should "allow states to pass this requirement onto their grantees, the local entities requesting the area designations."

HUD's Response. HUD disagrees with the statement that HUD should allow states to pass on this requirement to its grantees. Judging by the wide divergence of opinion among commenters as to what constitutes a reasonable time period, allowing each jurisdiction to determine its own process would lead to inconsistent implementation. In addition, allowing jurisdictions to set re-designation periods of anywhere from 5 years to 40 years would greatly complicate oversight by HUD and state agencies.

C. Comments Regarding Additional Blighting Influences

Comment: Graffiti, trash, and debris and other additional blight factors should be added. One commenter stated that because graffiti, trash, and debris have a blighting influence, the definition of "clearance" as an eligible activity should include graffiti and blight abatement. Furthermore, the definition of "clearance" as an activity that meets the national objective criteria of elimination of slums and blight on a spot basis in § 570.208(b) should be expanded to include graffiti, trash, and debris removal.

Another commenter offered the following as additional blight factors: inadequate or non-existent alleyways; inadequate or non-existent parking in a business area; street and sidewalk design that discourages foot and vehicular traffic; inadequate lighting; unpaved streets, or streets and alleys in substantial disrepair; and zoning that contributes to inappropriate or incompatible uses, such as churches, and liquor stores in the same block.

HUD's Response: HUD does not consider transitory conditions such as graffiti-sprayed walls and litter-strewn, vacant lots to be the sort of long-term "blighting influences" that the Department is attempting to address in this rule. Painting or cleaning up the affected areas can rectify such conditions relatively quickly. However, the conditions specified in this rule pose a more long-term negative effect on an area that can easily lead to blight in adjoining areas.

Grantees must be aware of the distinction between allowing graffiti and litter to be used as blighting influences to qualify an area as slum/blighted versus carrying out activities to address these conditions in an area that has already been designated as slum/blighted. While the designation process is held to the higher standards of the Housing and Community Development Act of 1974 (HCDA), as amended, activities carried out within these areas can address conditions that fit the state and local definitions. It should be noted that HUD regards graffiti as a dangerous sign of gang activity and is committed to using CDBG funds for its removal. The Department ruled several years ago that CDBG funds may be used for graffiti removal under the eligibility category of property rehabilitation for private residences and commercial or industrial buildings, and under the category of public service when removing graffiti from public buildings.

As the Department has stated many times in the past, HUD does not accept inappropriate zoning, the absence of infrastructure, or the presence of vacant or undeveloped land as prima facie evidence of blighted conditions. The Housing and Community Development Act of 1974, as amended, sets a higher standard than is intended or required under some state laws, which have broader purposes that might include examples of inadequate planning such as those listed by a commenter as additional blight factors. HUD holds to the higher standards set by the HCDA.

V. Comments on CDBG Entitlement Program Eligible Activities

A. Comments Concerning the Addition of Lead-Based Paint Evaluation and Reduction and Asbestos Abatement as Eligible Activities Under the CDBG Entitlement Regulations

Comment: Four commenters offered support for addition of elimination of lead-based paint and asbestos as conditions detrimental to public health and safety.

B. Comments Regarding Remediation of Environmental Contamination as Eligible Activity

Comment: Support for the addition of remediation of environmental contamination to the list of eligible activities. Six commenters declared support for this provision. One commenter stated that HUD should define the types of environmental contamination that may be considered blighting influences and that HUD's referring to other federal programs may cause confusion. This commenter recommended that instead of requiring state and local housing agencies to define environmental contamination themselves, that housing authorities could simply adopt, by reference, existing state definitions for environmental contamination under their respective state's brownfields program or voluntary cleanup program. Another commenter suggested that HUD provide grantees the flexibility to determine what constitutes contamination without tying the CDBG

program to complicated environmental regulatory standards.

HUD's Response. HUD stands behind its belief that the Department has neither the statutory responsibility nor the technical expertise to define levels or types of environmental contamination. Grantees are responsible for determining what constitutes a contaminated property within their program and for establishing definitions for their program. The Department realizes that local grantee staffs are not necessarily experts, either; therefore, they are free to adopt other federal or state definitions. However, tying the definition of "brownfields" in the CDBG program to that of another federal or state program should be approached with caution, as other programs may have statutory purposes and limitations that are much different from CDBG.

VI. Comments on National Objective Standards for Addressing Slums or Blight on a Spot Basis

Comment: Acquisition and relocation must be a precursor to other eligible activities that directly eliminate the conditions of blight or physical decay when addressing slums or blight on a spot basis. One commenter stated that HUD should consider including some flexibility for unexpected situations, such as the need to relocate tenants when their apartments have suffered extreme damage from a fire, when the property is uninhabitable and cannot be rehabilitated, or in cases where environmental contamination has been discovered and tenants cannot return to unsafe conditions.

HUD's response. The final rule does not decrease the flexibility grantees have in handling unexpected situations; it simply requires that grantees plan for a subsequent use. In the past, HUD has allowed grantees to acquire contaminated land with the immediate goal of relocating residents under the spot blight national objective, primarily on occasions when residents are not of low- or moderate-income. However, even in these instances, future activities were usually planned, such as clearance or cleanup of contamination.

One commenter explained that while every local community would agree with the goal of improving neighborhoods after land acquisition or relocation takes place, there is a concern that this requirement could be misinterpreted (by HUD or local grantees) to eliminate critical, appropriate pre-development activities. Another commenter agreed that stand-alone property acquisition or relocation of occupants does not remedy blight by itself. However, the commenter expressed concern about being able to demonstrate a fully realizable plan at the beginning of a redevelopment effort in order to secure grant funding.

HUD's response. The final rule does not discourage acquisition and relocation as pre-development activities, nor does it require that a proposed plan be in place before CDBG funds are spent. Acquisition and relocation continue to be eligible spot slums or blight-addressing activities, but only when they are a precursor to other eligible activities that directly eliminate the conditions of blight or physical decay. However, "stand-alone" acquisition of a property or relocation of occupants, with no further action to rehabilitate, redevelop, demolish, or to undertake other eligible activities that directly eliminate the blighting condition(s) or physical decay of the property, will not qualify as meeting the spot slums or blight national objective. Other development activities that address the blighting conditions do not have to be funded with funds from the CDBG program, Section 108 Loan Guarantee program, Economic Development Initiative, or Brownfields Economic Development Initiative.

This requirement is not unprecedented in the CDBG program. In fact, §§ 570.208(d)(1) and (2), and 570.483(e)(2) and (3) refer generally to the national objective determination of acquisition and relocation being tied to the property's planned use. Also, the public benefit standards for economic development projects found in §§ 570.209(b)(3)(D) and 570.482(f)(4)(ii)(D) forbids "acquisition of land for which the specific proposed use has not yet been identified." The final rule would not require grantees to have a proposed plan in place or be ready to move forward with the end-use at the time of acquisition or relocation, but it is the Department's sense that it would be prudent for a grantee to have a proposed plan for the property's re-use beforehand. HUD expects that some additional clearance or development activity will occur within a reasonable amount of time after the acquisition or relocation.

Comment: One commenter stated that the section of the final rule dealing with acquisition or relocation carried out under the spot slums and blight national objective needs clarification. The commenter asked whether direct treatment of a contaminated site without the necessity of acquisition of the site or relocation would be ineligible.

HUD's response. The Department does not mean to imply that any of the other eligible spot slums or blight-addressing activities has to be accompanied by acquisition and/or relocation. On the contrary, *if* acquisition or relocation occurs, it must be followed by another eligible activity that would directly eliminate the specific condition(s) of blight or physical decay. For instance, a grantee could clean up a contaminated site without acquiring the site; however, if the grantee acquired the site first, the project would be considered to be meeting the slum/blight national objective criteria only after clean-up occurred.

VII. Comments on Additional Reporting in IDIS

Comment: IDIS—Data collection. One commenter supported the addition of a data field to the Integrated Disbursement & Information System (IDIS) that would assist in determining the extent to which CDBG funds are used for brownfields-related activities. Another commenter sought clarification about what type of data pertaining to brownfields projects would be entered into the IDIS data field.

HUD's response. The IDIS system enables grantees to denote CDBG-funded activities that address brownfields.

VIII. Comments on Miscellaneous Issues

Comment: Rulemaking issue. A commenter requested that HUD publish a revised proposed rule prior to issuing a final rule and thereby allow another opportunity for public comment.

HUD's response. HUD allowed a reasonable time for citizens and interest groups to comment on the proposed rule. Since that time, the Department has carefully considered those public comments in the development of this final rule. Therefore, HUD does not feel that it is necessary to issue another proposed rule.

Comment: Clarification is still necessary. One commenter asked, "The proposed rule appears to allow some site assessment costs to be eligible as planning costs, while others may be the actual project delivery costs * * * how should grantees distinguish between planning and project costs? Using what criteria? Will activities such as symposia, workshops, conferences, general site visits, general administration of Brownfields programs at the local level, training activities, and overall monitoring of Brownfields project progress be eligible under Planning * * * or may these costs be added to project delivery?'

HUD's response. HUD is not changing the recordkeeping requirements regarding differentiation between

general administration, planning, and project delivery costs. Instead, the Department is merely enlarging the scope of planning activities considered eligible under CDBG to include some site assessment costs. Grantees should use the same methodology as in previous years to determine whether an activity is considered a planning or project delivery.

Comment: Support for the proposed rule. In general, six commenters offered support for the rule, using adjectives such as "positive," "appropriate," and "needed." One commenter stated that the proposed revisions "clarify the confusing parts of the existing regulations."

IX. Publication of Final Rule Concerning Community Revitalization Strategies Requirements and Miscellaneous Technical Amendments

On October 22, 1996, the Department published an interim rule, "Community Development Block Grant Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments" (61 FR 54913). The interim rule implemented the community revitalization strategies concept for the State CDBG program; it also made various technical amendments to correct or revise inaccurate or outdated regulatory citations. As an interim rule, it was effective on November 21, 1996, while providing an opportunity for public comment on the provisions of that rule, before putting them into final effect.

HUD received only one comment on the 1996 interim rule, and the comment supported the regulatory changes. In the intervening years, relatively few states have chosen to implement the community revitalization strategy concept in their program. HUD has not received any objections to the overall community revitalization strategy concept or to the specific regulatory provisions implementing it; rather, most states have chosen to take different approaches to the design and implementation of their programs. Therefore, this final rule makes final those interim provisions currently in effect for states, with no change.

The Community Revitalization Strategies portion of this final rule affects only the State CDBG program. Regulations for a comparable provision in the Entitlement CDBG program, Neighborhood Revitalization Strategies, have been in place for a number of years.

X. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0077 and 2506–0085. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 8 a.m. and 5 p.m. in the, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism," prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This final rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled "Regulatory Planning and Review." OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the file must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers applicable to the various components of the CDBG program are: 14.218, Entitlement program; 14.219, HUD-Administered Small Cities program; 14.225, Insular Areas program; 14.228, State program; 14.248, Section 108 Loan Guarantee program; and 14.246, Community Development Block Grants Economic Development Initiative.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5302–5320.

■ 2. Revise § 570.201(d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

* * * * *

■ 3. Remove § 570.202(b)(7)(iv), and revise § 570.202(a)(3), (b)(2), and (f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) * * *

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

* * * * *

(b) * * *

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements that may be undertaken singly, or in combination;

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities pursuant to § 570.608.

■ 4. Revise the undesignated introductory paragraph of § 570.203 to read as follows:

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart that may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

* * * * *

■ 5. Amend § 570.204 by adding a new sentence following the semicolon at the end of paragraph (a)(2).

§ 570.204 Special Activities by Community-Based Development Organizations (CBDOs).

(a) * * *

(2) * * * activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

* * * * *

■ 6. Amend § 570.205 by revising the first sentence of paragraph (a)(4)(iv) and adding a new paragraph (a)(4)(viii) to read as follows:

§ 570.205 Eligible planning, urban environmental design, and policy-planning-management capacity building activities.

(a) * * *

(4) * * *

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. * * *

* * * * *

(viii) Developing an inventory of properties with known or suspected environmental contamination.

* * * * *

■ 7. Revise § 570.208(b)(1)(ii), (b)(1)(iii), and (b)(2) to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(b) * * *

(1) * * *

(ii) The area also meets the conditions in either paragraph (A) or (B):

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at § 570.208(b)(1)(ii)(A), and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506 (b)(8)(ii).

* * * * *

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

* * * * *

■ 8. Amend § 570.209 by adding a new paragraph (b)(2)(v)(N) to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(2) * * *

(v) * * *

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

* * * * *

■ 9. Amend § 570.482 by:

A. Revising paragraph (c) to read as follows:

B. Removing and reserving paragraph (d);

C. Amending paragraph (f)(3)(v) by adding a new paragraph (N), to read as follows

§ 570.482 Eligible activities.

* * * * *

(c) *Special eligibility provisions.* (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:

(i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;

(ii) Services carried out under the provisions of section 105(a)(15) of the Act, that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a strategy approved by a state under the provisions of § 91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105–276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

* * * * *

(f) * * *

(3) * * *

(v) * * *

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

* * * * *

■ 10. Revise § 570.483(c)(1)(ii), (c)(1)(iv), and (c)(2) to read as follows:

§ 570.483 Criteria for national objectives.

* * * * *

(c) * * *

(1) * * *

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or(c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

* * * * *

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at § 570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

* * * * *

■ 11. Revise § 570.703(e), the introductory text in paragraph (f), and paragraph (l) to read as follows:

§ 570.703 Eligible activities.

* * * * *

(e) Clearance, demolition, and removal, including movement of structures to other sites and remediation of properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

(f) Site preparation, including construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings), or remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under § 570.205) with known or suspected environmental contamination, which is:

* * * * *

(l) Acquisition, construction, reconstruction, rehabilitation or historic preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under § 570.201(c), including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

* * * * *

Dated: May 16, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–4795 Filed 5–23–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
May 24, 2006

Part IV

Securities and Exchange Commission

17 CFR Part 242
Regulation NMS; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–53829; File No. S7–10–04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: The Commission is extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 610 requires fair and non-discriminatory access to quotations, establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. The Commission is extending the compliance dates to give automated trading centers additional time to finalize development of their new or modified trading systems, and to give the securities industry sufficient time to establish the necessary access to such trading systems.

DATES: The effective date for Rule 610 and Rule 611 remains August 29, 2005. The initial compliance date for Rule 610 and Rule 611 has been extended from June 29, 2006 to a series of five dates, beginning on October 16, 2006, for different functional stages of compliance that are set forth in section II.A of this release. The effective date for this release is May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Raymond Lombardo, Special Counsel, at (202) 551–5615, or David Liu, Attorney, at (202) 551–5645, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 29, 2005, the Commission published its release adopting Regulation NMS ("NMS Release").[1] The adopted regulatory requirements include: (1) New Rule 610 of Regulation NMS, which addresses access to markets and locking or crossing quotations; (2) new Rule 611 of Regulation NMS, which provides intermarket protection against trade-throughs (*i.e.*, trades at inferior prices) for certain displayed quotations that are automated and accessible; and (3) an amendment to the joint industry plans for disseminating market information to the public that modifies the formulas for allocating plan revenues to the self-regulatory organization ("SRO") participants in the plans ("Allocation Amendment").

The effective date for all of the initiatives in the NMS Release was August 29, 2005. The compliance dates for Rule 610, Rule 611, and the Allocation Amendment have not yet arrived. Phase 1 of compliance with Rule 610 and Rule 611 for 250 NMS stocks was set for June 29, 2006, and Phase 2 for all NMS stocks was set for August 31, 2006. The compliance date for the Allocation Amendment is September 1, 2006. For the reasons discussed below, the Commission has determined that the SROs and securities industry participants need additional time to implement these new NMS regulatory requirements. It therefore has decided to extend the compliance dates for Rule 610 and Rule 611 as set forth in this release. In addition, the Commission has today, by separate order, exempted the SRO participants in the joint industry plans from compliance with the Allocation Amendment until April 1, 2007.[2]

II. Extension of Compliance Dates

One of the primary Exchange Act objectives for the national market system ("NMS") is to promote the efficient execution of securities transactions by capitalizing on advances in communications and processing technologies.[3] Two of the core elements of Rule 610 and Rule 611 are the display of automated quotations, as defined in Rule 600(b)(3), and the operation of automated trading centers, as defined in Rule 600(b)(4). Automated trading centers displaying automated quotations must, among other things, immediately respond to incoming orders seeking to access the quotations and immediately update the quotations. Under Rule 611, only automated quotations displayed by automated trading centers will qualify as "protected quotations" under Rule 600(b)(58) and thereby receive intermarket protection against trade-throughs. In addition, Rule 610(d) requires SROs to adopt rules requiring their members reasonably to avoid displaying quotations that lock or cross protected quotations. Finally, the Allocation Amendment allocates market data revenues to SROs based partially on the extent to which they display quotations that equal the national best bid or offer in an NMS stock, but only if the quotations are automated.

Given the new regulatory framework created by Regulation NMS and the desire of investors and other market participants for more automated and efficient trading services, many SROs have announced major revisions of their trading systems. For example, the New York Stock Exchange LLC ("NYSE") is implementing its Hybrid Market, which is designed to integrate aspects of an auction market with automated trading.[4] The American Stock Exchange LLC ("Amex") has proposed to adopt a new trading platform that would offer both an electronic marketplace and floor-based trading.[5] The Boston Stock Exchange, Inc. ("BSE") plans to launch a new electronic trading system.[6] The Chicago Stock Exchange ("CHX") has proposed to no longer operate a physical trading floor and instead to adopt a new fully-automated matching system.[7] The Nasdaq Stock Market LLC ("Nasdaq") has proposed to integrate three different matching systems into a single, integrated matching system.[8] Finally, to qualify quotations displayed in the Alternative Display Facility ("ADF") as protected quotations,[9] the NASD must modify the ADF to designate a single participant for the ADF best bid and a single participant for the ADF best offer, because the ADF does not provide a single point of connectivity to ADF quotations. ADF participants, in turn,

[1] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[2] Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting SROs from compliance with the Allocation Amendment until April 1, 2007). *See* section II.B below.

[3] *See, e.g.*, Exchange Act section 11A(a)(1)(B), 11A(a)(1)(C)(i), and 11A(a)(1)(D); *see also* NMS Release, 70 FR at 37497.

[4] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (approval of NYSE rules establishing the Hybrid Market). Information concerning NYSE's Hybrid Market also is available at *http://www.nyse.com*.

[5] Information concerning Amex's proposed Auction and Electronic Market Integration (AEMI) platform, including a proposed rule change to establish the AEMI platform (SR–Amex–2005–104), is available at *http://www.amex.com*.

[6] Information concerning BSE's planned electronic equities trading market is available at *http://www.bostonstock.com*.

[7] Information concerning CHX's proposed rule change to establish the new trading market (SR–CHX–2006–05) is available at *http://www.chx.com*.

[8] Information concerning Nasdaq's proposed rule change to establish an integrated matching system (SR–NASDAQ–2006–001) is available at *http://www.nasdaq.com*.

[9] *See* NMS Release, 70 FR at 37534 (ADF best bid or offer must be accessible by routing to a single ADF participant).

must meet the new automated trading center requirements discussed above to qualify their quotations for trade-through protection, as well as the new access standards of Rule 610(b)(1).

The SROs currently are in varying stages of development of their new or modified trading systems. The ongoing nature of these changes to SRO trading systems has seriously complicated the efforts of securities industry participants to comply with the new NMS regulatory requirements. The SROs intend that their new or modified SRO systems would be automated trading centers and therefore sources of protected quotations. In addition, the current participants in ADF, as well as potentially new participants, have indicated their intent to be sources of protected quotations when they represent the ADF best bid or offer. To comply with Regulation NMS, industry participants must have clarity concerning all sources of protected quotations. For example, any industry participants that wish to rely on the exceptions in Rule 611(b)(5) and (6) for intermarket sweep orders ("ISOs") must have access to all sources of protected quotations to assure that they can meet the ISO requirements of Rule 600(b)(30).[10]

Industry participants therefore must develop policies, procedures, and systems that will enable them to route orders to access the protected quotations displayed by all of the new or modified SRO trading systems and ADF participants. To establish the connectivity and interfaces necessary to perform this function, industry participants must receive final technical specifications for all automated trading centers well in advance of the initial compliance date for trade-through protection. In addition, given the novel features of many of the new SRO trading systems, industry participants have indicated that they need a period in time in which to gain practical experience trading on the new systems, also in advance of the initial compliance date for trade-through protection. Finally, all of these changes must be implemented while trading continues in the most active equity markets in the world. Each day, the U.S. equity markets handle trading volume in NMS stocks of more than 3.9 billion shares and 120 billion dollars. The implementation of Regulation NMS must be managed appropriately so that it does not risk any disruption to the functioning of our equity markets.

The Commission fully supports the SROs' plans to develop more fully automated trading systems. These SRO systems would represent a major upgrade in the NMS that could benefit investors and all market participants by providing platforms for more efficient trading. The Commission also understands the need for industry participants to have sufficient time to establish the necessary access to these new SRO trading systems as they become operational. It therefore has decided to extend substantially the original compliance dates for Rule 610 and Rule 611. To provide the SROs and industry participants with greater certainty concerning the phase-in of NMS implementation, the Commission is adopting a series of revised compliance dates that incorporate the major functional steps required to achieve full implementation of Regulation NMS. The revised dates provide additional time for SROs to develop and install their new trading systems, but also impose firm deadlines for these functional steps to be completed. This systematic approach to implementation should give all industry participants an enhanced opportunity to complete their compliance preparations in the least disruptive and most cost-effective manner possible.

A. Rule 610 and Rule 611 Compliance Dates

The extended compliance dates for Rule 610 and Rule 611 are as follows:

October 16, 2006 ("Specifications Date"): Final date for publication on Internet Web sites of applicable SROs (*i.e.*, the exchange for SRO trading facilities and the NASD for ADF participants) of final technical specifications for interaction with Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below).

February 5, 2007 ("Trading Phase Date"): Final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below). The period from February 5, 2007 till May 21, 2007 is the "Trading Phase."

May 21, 2007 ("Pilot Stocks Phase Date"): Start of full industry compliance with Rule 610 and Rule 611 for 250 NMS stocks (100 NYSE stocks, 100 Nasdaq stocks, and 50 Amex stocks). The period from May 21, 2007 till July 9, 2007 is the "Pilot Stocks Phase."

July 9, 2007 ("All Stocks Phase Date"): Start of full industry compliance with Rule 610 and Rule 611 for all remaining NMS stocks. The period from July 9, 2007 till October 8, 2007 is the "All Stocks Phase."

October 8, 2007 ("Completion Date"): Completion of phased-in compliance with Rule 610 and Rule 611.

Each of these compliance dates represents an essential functional step on the way to full implementation of Rules 610 and 611. It is particularly important that all automated trading centers meet the October 16 Specifications Date and the February 5 Trading Phase Date. These new dates give automated trading centers more than seven additional months beyond the original June 29, 2006 Phase 1 compliance date to bring their new Regulation NMS-compliant trading systems into full operation. The seven-month extension is in addition to the one-year period originally provided when Regulation NMS was published. Accordingly, the extended dates are designed to provide all automated trading centers intending to display protected quotations during the Pilot Stocks Phase and the All Stocks Phase with sufficient time to meet the new intermediate compliance dates for posting final technical specifications and commencing full operation of the specified trading systems.

The Commission believes that industry participants need certainty concerning the protected quotations for which they will be required to afford trade-through protection under Rule 611 during the Pilot Stocks Phase and All Stocks Phase. Moreover, to prevent potentially serious disruption to implementation efforts, the industry needs this certainty well in advance of the Pilot Stocks Phase Date. Industry participants should not be placed in a position where they would be unexpectedly required to access the additional protected quotations of an automated trading center that had not posted its final technical specifications and commenced operation of its new trading system in a timely manner.

Accordingly, the Commission may consider, after the Specifications Date, whether to issue an exemptive order identifying those automated trading centers that met the Specifications Date and exempting all industry participants from trade-through and locking/crossing responsibilities with respect to the quotations of any trading center not identified as having met the Specifications Date. The Commission also may consider updating any

[10] *See* NMS Release, 70 FR at 37523.

previously-issued exemptive order to remove any trading center that failed to meet the Trading Phase Date by commencing full operation of its Regulation NMS-compliant trading system in accordance with its final technical specifications posted on the Specifications Date.

In addition to completing the functional steps that have been assigned specific compliance dates, the consolidated data streams need to be modified in several respects. As discussed in the NMS Release,[11] consolidated quotation and trade data in NMS stocks is disseminated to the public through three Networks jointly operated by the SROs—Network A for stocks listed on the NYSE, Network C for stocks listed on Nasdaq, and Network B for stocks listed on the Amex and other national securities exchanges. To facilitate compliance with Rule 610 and Rule 611, the Network quotation feeds must identify automated and manual quotations, as well as any types of quotations (such as "non-firm" quotations) that do not qualify as protected quotations. In addition, the Network quotation feeds must identify a single participant in the NASD's ADF for its best bid and for its best offer.[12] Finally, the Network trade feeds need to be modified to identify trades that are executed pursuant to exceptions set forth in Rule 611(b).[13] The Commission understands that the Networks have made substantial progress toward modifying their data feeds to reflect Regulation NMS. Given this progress, the Commission expects that appropriately modified Network data feeds will be fully operational in advance of the Specifications Date. It will consider further action in the future if necessary to assure that the Networks meet this timeframe.

The extended compliance dates established in this release, as well as the potential consequences for automated trading centers of failing to meet such dates, are discussed in greater detail below.

1. Specifications Date

By no later than October 16, 2006, all trading centers (both SRO trading facilities and ADF participants) intending to qualify their quotations for trade-through protection during the Pilot Stocks Phase and All Stocks Phase must post final technical specifications on the Internet Web site of the applicable SRO (*i.e.*, the exchange for SRO trading facilities and the NASD for ADF participants). The purpose of posting these specifications is to enable industry participants to plan their NMS compliance and modify their systems to interface with the systems of the automated trading centers. Given this purpose, the specifications must, at a minimum, address: (1) The identification of quotations as automated or manual to meet the requirements of Rule 600(b)(4); (2) an immediate-or-cancel functionality that meets the requirements of an automated quotation in Rule 600(b)(3); (3) an ISO functionality that allows industry participants to meet the requirements of Rule 600(b)(30); and (4) any other basic functionalities necessary to trade on the system. In addition, the specifications must be final with respect to these basic Regulation NMS functions and must remain so at least through the Completion Date. A significant alteration of the specifications prior to completion of the phase-in periods would defeat the purpose of giving the industry certainty concerning the quotations for which they will have trade-through and locking/crossing responsibilities.

The Commission recognizes that automated trading centers cannot produce final technical specifications until all relevant SRO proposed rule changes necessary for Regulation NMS-compliant trading systems have been filed, published for public comment, and approved by the Commission. Accordingly, it anticipates working closely with the SROs to address any issues raised by the filings and to take appropriate action by no later than October 1, 2006.

After the Specifications Date, the Commission intends to consider whether to issue an exemptive order pursuant to Rule 610(e) and Rule 611(d). Such an order could identify those trading centers that complied with the Specifications Date, and could exempt all industry participants from trade-through requirements under Rule 611 and locked/crossed requirements under Rule 610 for the quotations displayed by any trading center that is not identified in the exemptive order as having complied with the Specifications Date. This exemption could continue in effect at least through the Completion Date.[14]

2. Trading Phase Date

By no later than February 5, 2007, all trading centers (both SRO trading facilities and ADF participants) intending to qualify their quotations for trade-through protection must bring a Regulation NMS-compliant trading system into full operation for all NMS stocks intended to be traded during the phase-in period (*i.e.*, through the Completion Date). The trading system must operate in accordance with the specifications that were posted by the Specifications Date. The Trading Phase is designed to provide industry participants with an opportunity to gain experience with the new or modified systems of all automated trading centers that will display protected quotations during the phase-in periods. For example, industry participants will be able to test the effectiveness of their policies and procedures under Rule 610 and Rule 611, prior to any liability attaching under the Rules.

After the Trading Phase Date, the Commission may consider whether to update any exemptive order issued after the Specifications Date to remove any trading centers that failed to meet the Trading Phase Date. Any updated order could continue in effect at least through the Completion Date.

3. Pilot Stocks Phase Date

May 21, 2007 is the initial, all-industry compliance date for Rule 610 and Rule 611 with respect to 250 pilot stocks—100 for Network A, 100 for Network C, and 50 for Network B. The particular stocks will be chosen by the primary listing market, in consultation with Commission staff, to be reasonably representative of the range of each Network's securities. The primary purpose of the Pilot Stocks Phase is to allow all market participants to verify the functionality of their policies, procedures, and systems that are necessary to comply with the Rules.

The Pilot Stocks Phase is analogous to Phase 1 of the original implementation schedule set forth in the NMS Release.[15] May 21, 2007, therefore, provides the securities industry a nearly eleven-month extension of the original Phase 1 compliance date. In addition, the revised date gives all industry participants a seven-month period to complete their implementation efforts after the public posting of final technical specifications for automated

[11] 70 FR at 37558.

[12] *See* NMS Release, 70 FR at 37534 (ADF best bid or offer must be accessible by routing to a single ADF participant).

[13] *See* NMS Release, 70 FR at 37535 n. 317 (need for transparency concerning Rule 611 exceptions).

[14] Any exemptive order would address trade-through and locked/crossed responsibilities, but would not preclude the quotations displayed by a trading center not identified in the order from meeting the definition of an "automated quotation" under Rule 600(b)(3). Industry participants would need to include such quotations in their best execution analyses, and would be able particularly to assess whether their ability to access such quotations made them reasonably available when considered in the context of the ongoing challenges of meeting the compliance dates for Rule 610 and Rule 611.

[15] *See* NMS Release, 70 FR at 37576.

trading centers. The revised date also provides securities firms a more than three-month period to gain experience in actual trading with the new or modified systems of automated trading centers. These extended time periods are designed to facilitate a non-disruptive and cost-effective initiation of trade-through protection and locked/crossed quotation restrictions under Rule 610 and Rule 611.

4. All Stocks Phase Date

July 9, 2007 is the all-industry compliance date for Rules 610 and 611 with respect to all remaining NMS stocks. This All Stocks Phase will last three months and is intended to provide a final period for industry participants to gain significant experience complying with the Rules.

5. Completion Date

On October 8, 2007, the phase-in of compliance with Rules 611 and 610 will be complete. As of this date, any exemptive order issued after the Specifications Date, or updated after the Trading Phase Date, could be modified so that industry participants would have trade-through and locked/crossed requirements for the quotations of an automated trading center that may have failed to meet the Specifications Date or the Trading Phase Date. The quotations of any such automated trading center must be commenced pursuant to an approved SRO proposed rule change or other established SRO procedure that provides sufficient notice to the industry, as well as all necessary information (such as final technical specifications), that will enable industry participants to meet their regulatory responsibilities.[16]

B. Allocation Amendment Exemption

The Allocation Amendment modifies the existing formulas for allocating revenues to the SRO participants in the market data plans.[17] One of the most significant changes is the introduction of "Quoting Shares"—the allocation of revenues based on the extent to which automated quotations displayed by SROs equal the national best bid or offer in NMS stocks. Under the old formulas, no revenues are allocated for quotations. Under the new formula, 50% of revenues will be allocated for Quoting Shares. Due to the extension until February 5, 2007 of the deadline for automated trading centers to commence full operation of NMS-compliant trading systems, the Commission believes that the SRO participants in the joint industry plans for disseminating market information should be exempted from complying with the Allocation Amendment until after the Trading Phase Date. Accordingly, the Commission, by separate order, has exempted the SRO participants in the plans from complying with the Allocation Amendment until April 1, 2007.[18] The exemption gives trading centers additional time to implement systems that are capable of displaying automated quotations and thereby qualify for Quoting Shares.

[16] SRO trading facilities would be subject to the proposed rule change requirements of section 19(b) of the Exchange Act. ADF participants would be subject to procedures adopted by the NASD, after approval by the Commission, to assure appropriate access to the ADF participants. *See* NMS Release, 70 FR at 37543.

[17] *See* NMS Release, 70 FR at 37568.

[18] *See* note 2 above.

III. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance dates set forth herein are impractical, unnecessary, or contrary to the public interest.[19] All industry participants will receive substantial additional time to comply with Rule 610 and Rule 611 beyond the compliance dates originally set forth in the NMS Release. In addition, the Commission recognizes that industry participants urgently need notice of the extended compliance dates so that they do not expend unnecessary time and resources in meeting the original June 29, 2006 compliance date, such as by developing interfaces with trading systems that could change substantially prior to the extended compliance dates. Providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.[20]

By the Commission.

Dated: May 18, 2006.

J. Lynn Taylor,

Assistant Secretary.

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BILLING CODE 8010–01–P

[19] *See* section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) ("APA") (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impractical, unnecessary, or contrary to the public interest").

[20] The compliance date extensions set forth in this release are effective upon publication in the **Federal Register**. Section 553(d)(1) of the APA allows effective dates that are less than 30 days after publication for a "substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

Federal Register

Wednesday,
May 24, 2006

Part V

The President

Proclamation 8022—World Trade Week, 2006

Federal Register
Vol. 71, No. 100
Wednesday, May 24, 2006

Presidential Documents

Title 3—

The President

Proclamation 8022 of May 19, 2006

World Trade Week, 2006

By the President of the United States of America

A Proclamation

Free and fair trade is a powerful engine for growth and job creation in the United States and in countries throughout the world. World Trade Week is an opportunity to celebrate the benefits of trade for people everywhere.

America is a great force for prosperity, and our country's economic and national security interests are advanced through strong economic ties with our friends and allies. Since 2001, my Administration has concluded or implemented free trade agreements with 15 countries. We are working toward agreements with 11 additional countries, and we will continue to pursue further opportunities.

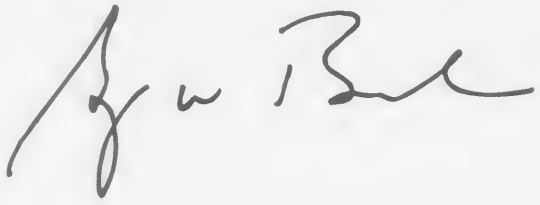
Last August, I was pleased to sign legislation implementing the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR). CAFTA–DR will reduce tariffs on American goods and expand export opportunities for American businesses. When the rules are fair, American people and businesses can compete with anyone in the world. CAFTA–DR will also advance our commitment to democracy and prosperity for our neighbors.

Studies have shown that the elimination of global trade barriers could help lift hundreds of millions of the world's poor out of poverty and boost economic growth around the world. An important opportunity to deliver the full benefits of trade to people around the world is the Doha Round of trade negotiations at the World Trade Organization. An ambitious Doha agreement could bring benefits to all nations, especially the developing world, and my Administration is working for a successful conclusion to these negotiations.

During World Trade Week and throughout the year, the United States remains committed to increasing free and fair trade and to improving the standard of living for our citizens. By working with our friends and allies, we will continue to help build a world that lives in liberty, trades in freedom, and grows in prosperity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2006, as World Trade Week. I encourage all Americans to observe this week with appropriate events, trade shows, and educational programs that celebrate the benefits of trade to our Nation and people around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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H.R. 4297/P.L. 109–222

Tax Increase Prevention and Reconciliation Act of 2005 (May 17, 2006; 120 Stat. 345)

H.J. Res. 83/P.L. 109–223

To memorialize and honor the contribution of Chief Justice William H. Rehnquist. (May 18, 2006; 120 Stat. 374)

S. 1382/P.L. 109–224

To require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe. (May 18, 2006; 120 Stat. 376)

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