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

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

WHERE: Office of the Federal Register
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206–AK46

Training; Reporting Requirements

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations requiring agencies to report training data. The new regulations require all Federal agencies to collect information that supports agency determinations of its workforce training needs and to document the results of training and development programs implemented to address those needs by requiring input into the OPM Governmentwide Electronic Data Collection System.

DATES: June 16, 2006.

FOR FURTHER INFORMATION CONTACT: Loretta L. Reeves by telephone at (202) 606–2419, by fax at (202) 606–2329, by TDD at (202) 418–3134, or by e-mail at *Loretta.Reeves@opm.gov.*

SUPPLEMENTARY INFORMATION: On May 27, 2005, OPM issued proposed regulations (70 FR 30647) to amend the rules in 5 CFR part 410, subparts C, D, and G, and requested comments by July 26, 2005, which addressed agency training records and reporting requirements.

OPM created a Governmentwide electronic system to capture employee human resource information, which includes training data. This system is explained and agency reporting requirements are defined in the *Guide to Personnel Recordkeeping (http://www.opm.gov/feddata/persdoc.asp)* and the *Guide to Human Resources Reporting (http://www.opm.gov/feddata/guidance.asp).*

To support this data collection, OPM is clarifying established policy to ensure that agencies maintain records of their training plans and to require that agencies report training data beginning December 31, 2006, in the form as prescribed by the OPM Governmentwide Electronic Data Collection System. The Governmentwide system will allow agencies to maintain accurate records to facilitate reporting on a regular basis as prescribed by the *Guide to Personnel Recordkeeping (http://www.opm.gov/feddata/persdoc.asp)* and the *Guide to Human Resources Reporting (http://www.opm.gov/feddata/guidance.asp).* In addition, there is a change in the period of time required for retaining records in subparts C and D, and a new method for reporting requirements subpart G.

Comments

OPM received comments from two agencies and three individuals who work in the Federal training community. One agency concurred with the proposal to collect training data through the OPM Governmentwide Electronic Data Collection System. The comments from the other agency and the individuals focused on the compatibility of the data elements to Learning Management Systems (LMS); the timeframe required to report data to OPM; and the two guides referenced above to guide agencies through the implementation process of reporting training data. In addition, the commenters are concerned with providing aggregated costs for training (e.g., travel and per diem costs) and need more clarity on this issue to avoid reporting the same data in different data calls.

The agency expressed concern about the compatibility of data elements in a current LMS and the proposed timelines to begin providing training data to OPM. The agency explained that there are competing priorities for their resources, namely resourcing manual collection of the required 25 data elements vs. continuing to work towards enterprise Learning Management Systems integration. OPM understands this is a concern to many Federal agencies. The new training data requirements were coordinated with service providers under the e-Training Initiative. All service providers are currently working on incorporating the data requirements and developing a data feed to OPM's Enterprise Human Resource Integration (EHRI) data warehouse. Agencies with LMS that do not incorporate these data requirements should consider switching to an e-Training Initiative approved e-learning solution.

The agency is also concerned that, if they are required to provide training data to OPM within the given deadline of October 1, 2005, they would have to ask the vendors to customize their system at considerable added cost. While OPM understands this concern, agencies have been aware of OPM's requirement to report training data since October 2003, when the first Interface Control Document (ICD) was published. The new training data requirements were coordinated with service providers under the e-Training Initiative. As noted above, all e-Training Service Providers are currently working on incorporating the data requirements and developing a data feed to OPM's EHRI data warehouse. Agencies with LMS that do not incorporate these data requirements should consider switching to an e-Training Initiative approved e-learning solution or work to become compliant.

This agency also suggested that the deadlines for regular submittal be reviewed and consideration be given to allow the OPM-approved LMS vendors time to react to these requirements in order to better serve the agencies. OPM agrees and has changed the deadline to begin regular submittals to December 31, 2006. This new start date will give agencies more time to make adjustments to their current systems. OPM again notes that the new training data requirements were coordinated with service providers under the e-Training Initiative and all service providers are currently working on incorporating the data requirements and developing a data feed to OPM's EHRI data warehouse.

In addition, this agency felt that the referenced guidance does not provide clear business processes for meeting the reporting requirements. The proposed rule refers to guidance with specific information about how the training data should be provided; however, there are still unanswered questions about the process. Procedures for submitting training data are contained in the *Guide to Personnel Recordkeeping* (Table 3–I) and the *Guide to Human Resources Reporting* (Chapter 4 and Appendix A). Agencies should develop their own

training and training documentation processes to meet the requirements of the guide. In addition, OPM will be providing the agencies with another reference guide to help HR offices understand how to report training data.

This same agency stated, if OPM anticipates that each agency pull this data from its respective systems, OPM will have to negotiate with their approved vendors in order to allow this level of raw data access to those hosted systems. The vendors provided through OPM's GoLearn site do not currently provide the necessary functionality to stream the data to OPM. In response, all service providers under the E-training initiative, including those vendors under OPM's GoLearn site are currently working on incorporating the data requirements and developing a data feed to OPM's EHRI data warehouse.

Also, this agency felt it does not have clarity on what is expected for cost data. Because most learning management systems are not financial systems, costs are usually estimates rather than actual costs. According to this agency, if estimates are not acceptable, its staff would have to create the necessary interface with their financial management and travel management systems. This agency contended that this would create a significant and undue hardship for them. The agency asserts that it is also unclear how this requirement will avoid reporting the same data in different data calls. The cost data that OPM requires is explained in the *Guide to Human Resources Reporting* (Chapter 4 and Appendix A). Agencies are free to determine which of their systems (HR, training, LMS, or financial) the data comes from to meet the data requirements as long as the information is reported accurately. At this time, OPM has no plans to request training data in another data call or through another mechanism so the chance for duplicative reporting should be minimal.

The same agency stated rules need to be clarified as they relate to the reporting requirements so that the rules fully address business processes. Procedures for submitting training data are contained in the *Guide to Personnel Recordkeeping* and the *Guide to Human Resources Reporting*. OPM does not dictate agency business processes; however, OPM is creating another guide to help explain the process for HR professionals that explains the reporting process in a different way. The title of the guide is *Guide for Collection and Management of Training Information*.

In addition, the individuals who commented stated that this requirement is an "unfunded mandate." OPM understands that there can be costs associated with migrating to the EHRI standard, and will work with agencies to find the least costly method for meeting the training reporting requirement, including recommending the use of an e-Training Initiative Approved e-Learning Solution.

These individuals also indicated that the Rule needs to remove redundant reporting (e.g., travel, tuition). Agencies are free to determine which of their systems (HR, training, LMS, or financial) the data comes from to meet the data requirements. The rules on travel and tuition are explained and defined in the *Guide to Human Resources Reporting*. Depending on the agency's system, these cost items may have different uses internally; however, OPM decided to keep the distribution of these items as they appear in the Guide. Agencies will need to determine how to extract the data for each element to report to OPM as long as it is non-duplicative, accurate and complete.

An individual expressed concern about data elements themselves, the value of the elements and the integration of the elements with standards established under the e-Training Initiative for LMS. The data elements were established to meet both current and future requirements to analyze and report on the actual costs and utilization of training throughout the government. The new training data requirements have been coordinated with service providers under the e-Training Initiative and all service providers are currently working on incorporating the data requirements and developing a data feed to OPM's Enterprise Human Resource Integration (EHRI) data warehouse. As mentioned before, OPM has the responsibility and authority to establish standards for the collection and reporting of HR data. Agencies can meet these standards and requirements by using an e-Training Initiative approved e-Learning solution.

This individual was also concerned that agency systems may not readily crosswalk to the training elements match for match. It is up to the agency to determine how it can respond to the specific training values and elements required by the Governmentwide system.

One commenter indicated a concern that many of the data elements are not available as standard elements within agency training systems, and that, if they are available, the coding types are devised to meet the agency needs and may not correlate with OPM requirements. OPM understands this concern, and in response has changed the time when agencies are to begin reporting training data to December 31, 2006. This will give agencies more time to make the necessary adjustments to their systems to comply with the training data reporting requirement. Agencies can meet these standards and requirements by using an e-Training Initiative approved e-Learning solution.

The same individual stated that significant potential costs may be incurred in reconfiguring agency data systems to meet these standards. OPM understands that additional costs may be incurred and that some agencies may need additional time to possibly realign funding to reconfigure current agency systems. For those agencies that require additional time beyond the newly established date to begin reporting training data, December 31, 2006, OPM has added a provision (c) under section 410.701 which allows agencies to request an extension based on an agency's plan to meet the requirements at a later date. OPM also notes that service providers under the e-Training Initiative and all service providers are currently working on incorporating the data requirements and developing a data feed to OPM's Enterprise Human Resource Integration (EHRI) data warehouse. Agencies with LMS that do not incorporate these data requirements should consider switching to an e-Training Initiative approved e-learning solution.

The same individual expressed that OPM through the e-Training Initiative has endeavored to standardize LMS across agencies to achieve economies of scale and eliminate redundancies. This individual observed that in this process, OPM has directed that a number of data fields be established as standards within agency LMS applications. The individual stated that many of the elements required under this rule are not required as standard data elements within an LMS under the e-Training Initiative. OPM coordinated internally with e-Training Initiative, EHRI and OPM's policy offices to ensure that there is consistency with what training data is required and what training data agencies need to report. In May of 2005, these 27 data elements were requested to become mandatory and e-Training Service Providers have worked with vendors in order for LMS vendors to meet this new mandatory requirement. However, it is up to the agencies to determine the best solution for capturing the training data. OPM encourages the agencies to work with their e-Training Service Provider on the specific solution.

The same individual stated that several data elements are related to financial costs and observed that this

data is normally maintained within agency financial systems. The commenter stated that agencies may be able to report on this data in the aggregate, but generally cannot do so on a course or per capita basis since many training and financial systems are not integrated. Agencies are free to determine which of their systems (HR, training, LMS, or financial) the data comes from to meet the data requirements. As long as the data is accurate, agencies can determine how to aggregate the responses in the report as required.

The same commenter suggested that agencies do not capture per diem cost separately from overall travel costs and observed that, generally, all travel costs are recorded as a collective total. Although per diem costs are a separate item in Table 3–I, OPM is mainly interested in the final cost of the travel for training completed by the employee and paid for by the Federal Government.

There were also concerns regarding the granularity of the data to be reported and the general value of that level of detail to OPM. One individual noted that reporting training information by training type, total contact hours, and total cost would appear to be more useful as an aggregate and would significantly lessen the administrative burden on agencies in collecting and managing this data. OPM is requesting the aggregate of the completed training events total cost only. Even though the required reporting process specifies the cost information needed, it is not an all-inclusive list nor is it at the lowest granular level of reporting cost. OPM's objective is to establish a level that is consistent for agencies Governmentwide. It is important that OPM require only the level of granularity that OMB, Congress and GAO have requested without having to go back out to the agencies to request more information on a regular basis.

One commenter stated that the requirement to begin reporting data as of April 1, 2005, is a burden for some components due to the complexity required to go back in time to attach additional data to historical information. OPM has not required that agencies capture historical training data. Agencies should start reporting data as of December 31, 2006. The April 1, 2005 date was originally set for the pilot to begin where agencies would have had the opportunity to report data and test the system to determine what errors in their reports need to be corrected and to be ready to submit accurate data by the effective date of the final regulation.

A commenter suggested that some components have no current LMS or electronic mechanism for collecting and submitting the requested data. Thus, the individual hoped that a reasonable amount of time will be allowed to collect and submit these data. OPM is aware there are agencies that do not have a LMS system; however, agencies can meet these standards and requirements by using an e-Training Initiative approved e-Learning solution. OPM has also changed the date when agencies must begin reporting training data to December 31, 2006, and has added a provision (c) under section 410.701, which allows agencies to request an extension based on their plan to meet the reporting requirement at a later date.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget as a significant regulatory action in accordance with Executive Order 12866.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 410

Education, Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 410 of 5 CFR as follows:

PART 410—TRAINING

■ 1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart C—Establishing and Implementing Training Programs

§ 410.311 [Removed]

■ 2. Remove § 410.311.

Subpart D—Paying for Training Expenses

§ 410.406 [Removed]

■ 3. Remove § 410.406.

Subpart G—Reporting

■ 4. In subpart G, revise the subpart title to read as set forth above:

■ 5. Revise § 410.701 to read as follows:

§ 410.701 Reporting.

(a) Each agency shall maintain records of training plans, expenditures, and activities in such form and manner as necessary to submit the recorded data to the Office of Personnel Management (OPM) through the OPM Governmentwide Electronic Data Collection System.

(b) Beginning December 31, 2006, each agency shall report the training data for its employees' training and development at such times and in such form as required for the OPM Governmentwide Electronic Data Collection System, which is explained in the *Guide to Personnel Recordkeeping* and the *Guide to Human Resources Reporting.*

(c) Agencies may request an extension for the timeframe in which they will begin reporting the data under paragraph (b) of this section. OPM may grant an extension based on an approved agency plan to meet the reporting requirements. No extension will be granted for a timeframe beyond December 31, 2007.

(d) Each agency shall establish a Schedule of Records for information required to be maintained by this chapter in accordance with regulations promulgated by the National Archives and Records Administration (NARA).

[FR Doc. 06–4589 Filed 5–16–06; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 625

Healthy Forests Reserve Program

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: Title V of the Healthy Forests Restoration Act of 2003 (Act) (Pub. L. 108–148) authorizes the establishment of the Healthy Forests Reserve Program (HFRP). The purpose of this program is to assist landowners in restoring and enhancing forest ecosystems to: Promote the recovery of threatened and endangered species; improve biodiversity; and enhance carbon sequestration. This interim final rule sets forth how NRCS will implement HFRP to meet the statutory objectives of the program.

DATES: This rule is effective May 17, 2006. Comments must be received by August 15, 2006.

ADDRESSES: Send comments by mail to Robin Heard, Acting Director, Easement

Program Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail: *Rules@usda.gov;* attn: Healthy Forests Reserve Program. This rule may also be accessed via Internet through the NRCS homepage at *http://www.nrcs.usda.gov/programs/HFRP.* The rule may also be reviewed and comments may be submitted via the Federal Government's centralized rulemaking Web site at *http://www.regulations.gov.* All comments, including the name and address of each commenter, will become a matter of public record, and may be viewed during normal business hours by contacting NRCS at the address above.

FOR FURTHER INFORMATION CONTACT: Robin Heard, Director, Easement Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1854; fax: (202) 720–4265; e-mail: *Robin.heard@usda.gov,* Attention: Healthy Forests Reserve Program. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

America's forests provide multiple benefits and resources for our society including, timber, wilderness, minerals, recreation and wildlife. In addition, a healthy forest ecosystem provides critical habitat for wildlife, sustains biodiversity, protects watersheds, sequesters carbon, and helps purify the air. However, some forest ecosystems have had their ecological functions reduced from a number of factors such as fragmentation, loss of periodic fires, or invasive species. This habitat loss has been severe enough in some circumstances to cause dramatic population decline such as in the case of the ivory-billed woodpecker. Many forests need active management to restore health and function to sustain biodiversity and habitat for species that have suffered significant population decline. Active management of forest ecosystems can also increase carbon sequestration and improve air quality.

There are many forest ecosystems on private lands provide that habitats for species that have been listed as endangered or threatened under Section 4 of the Endangered Species Act (ESA), 16 U.S.C. 1533, (listed species). Congress enacted the HFRP to provide financial support to landowners to undertake projects that restore and enhance forest ecosystems to help promote the recovery of listed species, improve biodiversity, and to enhance carbon sequestration.

The Secretary of Agriculture has delegated authority to implement HFRP to the Chief of NRCS (Chief). In addition, technical support associated with forest management practices may also be provided by the Forest Service. Section 501 of the Act provides that the program will be carried out in coordination with the Secretary of the Interior and the Secretary of Commerce. NRCS will work closely with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to further the species recovery objectives of the HFRP and to help make available to HFRP program participants safe harbor or similar assurances and protection under ESA section 7(b)(4) or Section 10(a)(1), 16 U.S.C. 1536(b)(4), 1539(a)(1).

Discussion of the Program

HFRP is a voluntary program to assist landowners in restoring, enhancing, and protecting forestland. The Chief provides national leadership for the implementation of the program. At the state level, the NRCS State Conservationist determines how best to deliver the program and implement national policies in an efficient manner based on the national priorities identified in each sign-up announcement.

NRCS evaluated whether the HFRP could be administered by partnering with third parties to acquire easements, similar to the Farm and Ranch Lands Protection Program, 16 U.S.C. 3838h and 3838i, and concluded that the Act does not provide authority to do so. Thus, the United States Department of Agriculture will hold title to HFRP easements.

Enrollment Options: There are three enrollment options for program participants and projects will be enrolled in the approximate proportion of landowner interest expressed in a particular enrollment method. NRCS may enroll land in HFRP through 10-year restoration cost-share agreements; 30-year easements; or 99-year easements. NRCS may offer an easement with duration longer than 30 years and less than 99 years if a different duration is the maximum allowed under state law. The program has a statutory enrollment cap of two million acres. See, 16 U.S.C. 6572.

NRCS will only accept applications for enrollment during announced sign-up periods. The sign-up announcement will identify the national requirements for the particular sign-up, including the geographic extent. NRCS will select applications for enrollment based on ranking and selection criteria developed for the particular forest ecosystem, following the national guidelines outlined in the sign-up notice. With both HFRP easements and 10-year cost-share agreements, participants will have the opportunity to utilize common management practices and activities to restore, enhance, and protect forest ecosystems.

As required by Section 503 of the Act, 16 U.S.C. 6573 all participants will enter into a restoration plan for the enrolled area (HFRP restoration plan) for the length of their agreement or easement. The HFRP restoration plan includes conservation treatments, such as the conservation practices and measures necessary to the restoration and management of the enrolled area. Where NRCS will provide financial assistance for this conservation treatment, NRCS will enter into a restoration agreement and the HFRP restoration plan will serve as the basis for the agreement. Therefore, participants may receive financial assistance for restoration management practices identified in the restoration plan through enrollment under the 10-year cost-share agreement option or in conjunction with enrollment through either the 30-year or 99-year easement option. If desired by the participant, the HFRP restoration plan can also serve as the basis for obtaining safe harbor or similar assurances, which shall be made available to the landowner through NRCS in coordination with FWS and NMFS.

Landowner Protections (safe harbor or similar assurances): Because many listed species occur primarily or exclusively on privately owned property, NRCS believes it is critical to involve the private sector in the conservation and recovery of these species. Many property owners, however, are concerned about land use restrictions, particularly in relation to the prohibition on take of listed species under section 9 of the ESA, which may occur if listed species colonize their property or increase in numbers as a result of their land management. Thus, these landowners may avoid or limit land and water management practices and activities that could enhance and maintain a specific habitat. Additionally, habitat adjustments may cause an improvement in habitat for one species and a decline in habitat for another.

Section 506 of the Act, 16 U.S.C. 6576, requires that the Secretary of Agriculture to make available "safe harbor or similar assurances and protection" ("Landowner Protections")

to program participants with land enrolled in the HFRP and whose conservation activities result in a net conservation benefit for listed species, candidate species, or other species of concern. Landowners Protections are explained further below.

Section 503 of the Act requires that land enrolled in the program be subject to a restoration plan and that the restoration plan require such practices as are necessary to restore and enhance habitat for listed species. Consistent with the section 502 eligibility provisions, the restoration plan actions for lands enrolled in the HFRP will be designed to restore, enhance, or otherwise increase the likelihood of recovery of listed species or candidates for listing, State-listed species, or special concern species. Because program participants must have an HFRP restoration plan, program participants' activities that comply with the terms of the 10-year cost-share agreement, easement and/or HFRP restoration plan are assumed to result in a net conservation benefit that contributes to the recovery of listed species, candidate or other species. In addition, if the means to obtaining Landowner Protections requires the program participant to take additional conservation or protection measures besides those contained in his or her 10-year cost-share agreement or easement, such measures shall be considered part of an HFRP restoration plan for these purposes. In exchange, program participants will be able to obtain safe harbor or similar assurances (Landowner Protections) under ESA section 7(b)(4) or section 10(a)(1), 16 U.S.C. 1536(b)(4), 1539(a)(1).

There are two ways that NRCS plans to help its program participants obtain Landowner Protections, and these protections are very similar under either approach:

(1) NRCS may extend to a HFRP program participant incidental take authorization received by NRCS through biological opinions issued by FWS or NMFS pursuant to section 7(b)(4) of the ESA. Such an incidental take authorization will be obtained by NRCS through consultation with FWS or NMFS under section 7(a)(2) of the ESA. Under this approach, the program participant will be covered by the authorization to NRCS to "take" (as defined in the ESA) listed species in the course of conducting management activities and other compliance with the terms of a 10-year cost-share agreement, or a 30-year or 99-year easement, and associated restoration plan. This may, if the landowner so desires, include authorization for incidental take associated with returning to baseline resource conditions at the end of the applicable period. Thus, the landowner would not be in violation of ESA section 9 take prohibitions.

(A) With regard to modifications of a restoration plan than contains provisions for a net conservation benefit, NRCS will work with program participants who request modifications to a restoration plan, provided the requested modifications do not adversely affect the forest ecosystem for which the easement or agreement was established or the basis on which the section 7 incidental take authorization was issued, and a net conservation benefit is still likely to be achieved.

(B) In the event where a landowner enrolled in HFRP through a 10-year cost share agreement does not carry out the terms and conditions of the restoration agreement, NRCS has the discretion to terminate the 10-year cost share agreement and associated HFRP restoration plan. Such termination may also require the Services to terminate Landowner Protections. NRCS does not have authority to terminate HFRP easements. In easement circumstances, where a change of conditions requires the Services to terminate a Landowner Protection, NRCS will work to address the changed conditions in the HFRP restoration plan in coordination with the landowner.

(2) NRCS will provide technical assistance to the HFRP program participant to enter into a Safe Harbor Agreement (SHA) with FWS or NMFS under section 10 of the ESA, 16 U.S.C. 1539. ESA Section 10 Safe Harbor Agreements are voluntary arrangements between either FWS or NMFS and cooperating landowners where landowners agree to adopt practices and measures, or refrain from certain activities, that are reasonably likely to result in a net conservation benefit that contributes to the recovery of listed species. In many cases the FWS or NMFS enter into a programmatic SHA with a non-Federal entity (e.g., a State Fish and Wildlife Agency or a local government), who holds the permit and assurances and extends them to landowners who chose to participate in the SHA. SHA requirements are described in the Safe Harbor Policy adopted by FWS and NMFS (64 FR 32717) and, in the case of FWS, regulations at 50 CFR 17.22(c) and 17.32(c). In exchange for their commitment to undertake conservation measures, the landowner receives an enhancement of survival permit under section 10 of the ESA authorizing incidental take that may occur, both as a result of management activities and as a result of the return to baseline conditions, of the listed species covered by the SHA. Thus the landowner would not be in violation of ESA section 9 prohibitions on take. In addition to the authorization for incidental take provided through the enhancement of survival permit, under an SHA the landowner also receives assurances that:

(A) Provided the SHA is being properly implemented, FWS or NMFS may not require additional or different management activities be undertaken by the permittee without the consent of the permittee; and

(B) The FWS must, with the consent of the permittee, pursue all appropriate options to avoid revoking an enhancement of survival permit.

Whether or not a program participant seeks the assistance of NRCS to obtain the Landowner Protections through either of the approaches described above, NRCS has its own ESA Section 7(a)(1) and Section 7(a)(2) responsibilities. Under ESA Section 7(a)(1), NRCS utilizes its authorities to further the purposes of ESA by carrying out programs for the conservation of endangered and threatened species; this program is an example of NRCS utilizing its authorities to further the purposes of ESA. Consistent with ESA Section 7(a)(2), NRCS will consult with the appropriate Service to ensure that its activities are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. Pursuant to consultation under ESA Section 7(a)(2), the Service issues a biological opinion and an incidental take statement to the NRCS as the action agency. The incidental take statement identifies those terms and conditions to which the NRCS, as the action agency, must adhere in order to avoid incurring liability that would be associated with unauthorized take of listed species under section 9 of the ESA. Typically, the action consulted upon includes measures that designed to avoid or minimize incidental take, and the terms and conditions simply specify that these agreed upon measures must be implemented.

In its administration of HFRP, NRCS is proposing to enter into programmatic consultation with FWS or NMFS on a forest ecosystem basis, or other appropriate geographic scale, to encompass NRCS activities under HFRP within that area. Pursuant to the consultation, if the appropriate Service issues NRCS a biological opinion and an Incidental Take Statement authorizing NRCS activities under HFRP to occur under certain terms and conditions,

HFRP program participants automatically would be covered by this authorization for incidental take by virtue of their commitment to implement the restoration plan associated with their HFRP easement or 10-year cost share agreement. Courts have held that a party which is neither a federal agency nor an applicant for a permit or license can take members of a listed species without violating the ESA if the action in question was contemplated by an incidental take statement issued to a federal agency under Section 7(a)(2) of the ESA. See, *Ramsey* v. *Kantor,* 96 F.3d 434 (9th Cir. 1996) Thus, HFRP program participants can obtain protection from ESA liability by adhering to the terms and conditions of the Incidental Take Statement issued by the appropriate Service to NRCS for that particular forest ecosystem. HFRP program participants also have the option of entering into a Safe Harbor Agreement with FWS or NMFS to receive similar protections.

The HFRP and associated Landowner Protections will benefit listed species while giving private landowners protection from potential restrictions of section 9 of the ESA by authorizing the take of listed species that may occur during restoration actions, ongoing operations, or returning to baseline conditions at the end of the 10-year cost-share agreement or a 30-or 99-year easement. These Landowner Protections operate with lands enrolled in the HFRP and are valid for as long as the participant is complying with the terms under which the Landowner Protections were given.

Land Eligibility: Consistent with section 502(b) of the Act, 16 U.S.C. 6572(b), NRCS identifies in 625.4 that it will consider land eligible if it is privately owned land, including Indian trust land, the enrollment of which will restore, enhance, or otherwise measurably increase the likelihood of recovery of listed species, candidates for such listing, State-listed species, or species identified by the Chief for special funding consideration. Privately-owned land does not include land owned by the federal, state, or local government. NRCS will work with FWS and/or NMFS in identifying particular forest ecosystems that meet these eligibility criteria.

In enrolling such land, NRCS will give additional consideration to enrolling land that improves biological diversity and increases carbon sequestration. NRCS will only enroll land offered voluntarily by the landowner.

Lands in addition to the above described eligible lands may also be enrolled if NRCS determines enrollment of such land is necessary for the efficient administration of an easement or restoration cost-share agreement.

Enrollment Priority: As provided in Section 502(g) of the Act, 16 U.S.C. 6572(g), NRCS will give priority to the enrollment of land capable of supporting the forest ecosystem conditions that will provide the greatest conservation benefit primarily to species listed under the ESA and secondarily to other species that are candidates for such listing, State-listed species, or species identified by the Chief for special funding consideration. NRCS will not enroll otherwise eligible lands if it determines that the current land use has modified site conditions to such an extent that the re-establishment of the desired forest ecosystem conditions is impracticable or infeasible. NRCS will also emphasize program implementation to restore the Nation's forest land for the improvement of biological diversity and the sequestration of carbon.

NRCS will consider the cost-effectiveness of each 10-year cost-share agreement or easement, and associated HFRP restoration plan, so as to maximize the Federal investment. However, NRCS will not utilize a strict environmental benefits index, but will evaluate the enrollment of particular land parcels based upon their site conditions, the feasibility to restore the desired forest cover, proximity to other parcels with the desired forest cover, contribution of resources by partnering organizations, and other resource and cost factors. NRCS seeks public input regarding how best to maximize the federal investment as required by statute.

NRCS may place enrollment priority upon certain regional forest ecosystems, such as the longleaf pine forest ecosystem of the Southeast, riparian forest ecosystems of California and the Southwest, mesic hardwood forest ecosystems of the Appalachian region, coastal coniferous forests of New England, and temperate rainforests of the Pacific Northwest. Each of these forest ecosystems have listed endangered and threatened species that could benefit from more active forest management practices and measures. NRCS will identify through a sign-up notice process the geographic scope and ranking priorities for that particular sign-up.

NRCS considered several methods of ranking the applications, including a state-by-state ranking, a national ranking, or a combination of the two methods. Under the combination method, NRCS, with the input of the applicable State Conservationists, will develop a ranking process for applications received within that forest ecosystem. States would initially screen applications based on criteria contained in the sign-up announcement and the more locally-derived specific criteria. NRCS seeks public input about the manner in which NRCS should select particular projects for funding. In carrying out the HFRP, NRCS may consult with non-industrial private forest landowners, other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, and non-profit conservation agencies.

Provisions That Apply to Both Easements and 10-Year Restoration Cost-Share Agreements

As required by section 503 of the Act, 16 U.S.C. 6573, lands enrolled in HFRP shall be subject to a restoration plan for the period of time the land is covered by either a 10-year cost share agreement or easement that requires such restoration practices as necessary to restore and enhance habitat for listed species under ESA and animal and plant species before the species reach such endangered or threatened status, such as candidate, State-listed species, and special concern species as identified by the Chief. NRCS will work closely with FWS and NMFS to identify those practices and measures that will be included as the conservation treatment within the HFRP restoration plan. NRCS believes that the close collaboration with FWS and NMFS will aid in the coordination of the implementation of the program and in establishing program policies. However, no determination by FWS, NMFS, the Forest Service, federal or state agency, conservation district, or other organization will compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

Both HFRP easements and 10-year cost-share agreements will require that the land is managed to maintain the vitality of the forest ecosystem as described in the HFRP restoration plan. The HFRP restoration plan will take into account management practices and measures necessary for further species recovery objectives of the HFRP and may serve as the basis for program participants to obtain Landowner Protections as described above.

Section 503 of the Act, 16 U.S.C. 6573, requires that NRCS and the landowner will jointly develop the HFRP restoration plan, in coordination with the Secretary of the Interior. Similar to the Grassland Reserve

Program and the Wetland Reserve Program (which are other conservation programs administered by NRCS), the "restoration agreement" will be the legal instrument used to incorporate the HFRP restoration plans into both the 10-year cost-share agreements and easements and will provide cost-share assistance for implementing measures that will restore and enhance habitat for listed species or candidate, state-listed or species of special concern. NRCS has determined that program implementation is greatly enhanced in this way if it has the flexibility to utilize the same type of legal instrument, in this case the restoration agreement, for providing financial assistance for restoration implementation activities to program participants.

Section 506(b) directs that if Landowner Protections require the taking of measures that are in addition to the measures covered by the applicable HFRP restoration plan, the cost of the additional measures, including the cost of any permit, are considered part of the HFRP restoration plan for purposes of financial assistance. As such, any additional measures that might be required so that the HFRP participant can qualify for Landowner Protections would be eligible for cost-share assistance under section 504 of the Act, 16 U.S.C. 6579.

NRCS will work with the program participant and the Services to ensure that these measures are designed to restore and enhance habitat so as to provide a net conservation benefit for listed species, candidate species, State-listed species, and special concern species. These measures would be site-specific and would be addressed as management activities in the HFRP restoration plan. Failure by the program participant to perform the activities required by the HFRP restoration plan and/or any measures required can result in violation of the easement or 10-year cost-share agreement, and in the loss of Landowner Protections.

A major program participation requirement contained in § 625.11 and § 625.12 of the interim final rule is the inclusion of a right under an easement or 10-year cost-share agreement for NRCS to determine if a landowner's specific use of the enrolled area may be permitted as compatible with the purposes for which the land was enrolled into HFRP. Under the terms of an easement, the landowner would retain fee title to the land and such uses that are compatible with maintaining the conservation benefits for priority species. Such uses may include hunting, fishing, hiking, camping, bird watching, and other undeveloped recreational activities. Under the terms of a 10-year cost-share agreement, NRCS will include provisions within the agreement document that identify those activities determined compatible with the short-term duration of enrollment. For a use to be considered compatible, the Chief or designee would determine that the use is consistent with the purposes of HFRP: (1) Promoting the recovery of listed species, (2) improving biodiversity, and (3) enhancing carbon sequestration. NRCS seeks comment about the compatible use process for HFRP.

To be determined compatible, the type, method, timing, duration, and extent of a use must be an integral and positive part of the overall HFRP restoration plan for the easement or 10-year cost-share agreement. For example, in an easement area that is a restored forest ecosystem, a salvage cut to remove diseased or damaged trees may be appropriate. A selective harvest of over-story trees which opens up the canopy to provide for under-story vegetative diversity may also be compatible in specific cases. A clear cutting approach to timber harvest, however, for the purpose of achieving economic gain at the expense of the forest ecosystem or essential wildlife habitat would not be compatible.

Once an easement or 10-year cost-share agreement has been signed, a program participant can request modifications to the HFRP restoration plan that do not adversely affect the forest ecosystem for which the easement or 10-year cost-share agreement was established or the basis on which Landowner Protections were issued. However, as determined by NRCS, in coordination with FWS or NMFS, the modification must result in equal or greater species conservation.

Section 504 of the Act, 16 U.S.C. 6574, provides for cost-share assistance for the adoption of approved practices on land enrolled through both the easement and 10-year cost-share agreement options. However, the Act limits the rate of cost-share assistance depending upon the duration of the enrollment. For 99-year easements, NRCS will reimburse a program participant an amount not less than 75 percent nor more than 100 percent of the cost of approved practices. For 30-year easements, NRCS will reimburse a program participant an amount not more than 75 percent of the cost of approved practices. For 10-year cost-share agreements, NRCS will reimburse a program participant an amount not more than 50 percent of approved practices.

Easements: Section 625.4 of the interim final rule provides that for participation in an easement option, the applicant must be the owner of the eligible land. To grant an easement to the United States, the landowner must possess clear title to the land or be able to provide subordination agreements from third parties with interest in the land. Additionally, there must be access to the property from a public road. The landowner must comply with the terms of the easement and associated restoration agreement, if one is required.

NRCS intends to acquire easements under HFRP utilizing a standard conservation easement deed similar to the deed used by the Grasslands Reserve Program (GRP). The standard conservation easement, termed a negative restrictive easement, is an interest in land where the holder of the easement has the right to require the owner of the burdened land (i.e., the easement area) to do or not to do specified things with respect to that land. Under a negative restrictive easement, the drafter of the easement deed anticipates the possible uses of the property that might interfere with forest resources and specifically prohibits them in the easement document. Negative restrictive easements tend to work well in programs where the landowner will continue to conduct various activities on the property and only a few activities need to be prohibited to meet program purposes. NRCS also considered utilizing a reserved interest easement deed similar to the deed used for the Wetlands Reserve Program (WRP). Under a reserved interest deed, the purchaser acquires all rights in the property not reserved to the landowner. Thus, reserve interest deeds identify to the landowner the rights s/he is keeping in the property and thus knows which activities are permitted and which are prohibited. Activities that do not interfere with protecting forest resources purposes would be identified in the deed as reserved to the landowner. Reserved interest easements tend to work very well in programs where habitat protection is a primary purpose and the landowner is not expected to perform many activities on the property. NRCS seeks public comment regarding which deed form should be used in the administration of HFRP.

Easement payments are based on appraisals that derive value from the method commonly referred to as the before-and-after appraisal method. Under this appraisal method, the amount paid for the easement is the fair market value of the easement which is determined by a before-and-after

appraisal method done by a certified land appraiser. A certified land appraiser appraises the fair market value of the land before an HFRP easement is acquired and subtracts from this amount what the fair market value of the land would be after an HFRP easement is acquired. This difference in value represents the value of the HFRP easement and will form the basis of compensation paid to an HFRP program participant. For easements longer than 30 years and not more than 99 years, NRCS will offer to pay the landowner not less than 75 percent, nor more than 100 percent, of the value of the easement for the time period the land is subject to the easement, as determined by a before-and-after appraisal. In the case of a 30-year easement, NRCS will offer to pay the landowner an amount equal to not more than 75 percent of the value of the easement for the time period the land is subject to the easement, as determined by a before-and-after appraisal.

Easement payments may be provided in one lump sum payment at the time of closing or participants may elect to receive installment payments. Participants who elect to receive installment payments can receive no more than 10 annual payments of equal or unequal amount, as agreed to by NRCS and the landowner.

In addition to compensation for the conveyance of an easement, a landowner may receive cost-share assistance towards the establishment or maintenance of practices and measures that restore and enhance habitat for listed species, candidate species, State-listed species, and other species of special concern. These practices and measures must be approved by the Chief or his designee, to be eligible for cost-share assistance under HFRP.

NRCS will provide cost-share assistance to program participants for practices and measures, including those necessary to obtain Landowner Protections, which are incorporated into an HFRP restoration plan. The extent of cost-share assistance will be up to the maximum allowed by law, based on the NRCS State average cost list, and subject to the availability of funds. The Act provides an option for NRCS to base cost-share assistance upon either actual costs or an average cost list developed by NRCS. See 16 U.S.C. 6574. NRCS determined to use the average cost list consistent with its cost-share programs. NRCS believes the average cost approach is more cost-efficient when considering the administrative costs associated with utilizing the actual cost approach in terms of the additional documentation that needs to be submitted by the program participant and processed by NRCS. NRCS welcomes public comment regarding the use of average or actual costs when it provides cost-share assistance under HFRP.

Lastly, section 504(d) of the Act, 16 U.S.C. 6574(d), provides that NRCS may accept and use contributions of non-federal funds to make payments.

10-Year Restoration Cost-Share Agreements: Instead of applying for entry into HFRP through one of the easement options, section 502(f) of the Act, 16 U.S.C. 6572(f), allows landowners, including other people who have general control of property for the agreement period, to apply for enrollment into HFRP through 10-year cost-share agreements. HFRP 10-year cost-share agreements do not involve a transfer of real property rights like under the easement enrollment options. Applicants who do not have fee title ownership of the enrolled area need to provide evidence of control of the property for the length of the agreement. If cost-share payments are to be divided between the landowner and other participants or multiple landowners, the 10-year cost-share agreement will need to be signed by all parties, indicating their respective share of the payments. As required by section 504(c) of the Act, 16 U.S.C. 6574(c), cost-share payment amounts under the 10-year cost-share agreement option will not exceed 50 percent of the average cost of approved practices and measures. Payments will be paid upon completion of a practice, a measure, or identifiable component of a practice.

Cost-shared practices and measures shall be maintained by the participant for the life of the practice or measure. The life of the practice or measure is determined by the NRCS State Conservationist, and shall be consistent with other NRCS conservation programs. All practices and measures will be implemented in accordance with the NRCS requirements.

Persons who enroll land initially through a 10-year cost-share agreement may subsequently enroll the land through an easement, providing the application ranks high enough to be funded, all other eligibility criteria are met, and funds are available to acquire an easement. The easement application will be considered a new offer that will be evaluated with all other new offers. This policy allows NRCS to obtain longer term protection on lands considered valuable for enrollment.

Summary of Provisions and Request for Comment

NRCS welcomes comments on all aspects of this interim final rule. The following describes the specific requirements in each section of the regulation. Activities conducted by NRCS would be performed by representatives of NRCS or third party providers hired by NRCS as identified in 7 CFR part 652. Section 505(b) of the Act, 16 U.S.C. 6575(b), authorizes NRCS to request the services of, and enter into cooperative agreements with, individuals or entities identified as technical service providers pursuant to section 1242 of the Food Security Act of 1985, as amended, 16 U.S.C. 3842.

Section 625.1 Purpose and Scope

This section describes the general purpose and scope of HFRP. The purpose of HFRP is to assist landowners, on a voluntary basis, in restoring, enhancing, and protecting forest ecosystems on private lands through 10-year cost-share agreements and easements. The objectives of HFRP are to promote the recovery of listed species, maintain and improve plant and animal biodiversity, and enhance carbon sequestration.

The Chief may implement HFRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands. The Chief may determine to offer the program nationwide, in particular regional forest ecosystems, or in particular States, depending upon the extent of funding available, the identification of eligible forest ecosystems, and other considerations.

Section 625.2 Definitions

This section sets forth the definition of terms that are utilized throughout the regulation. Many of these definitions are not unique to HFRP. However, several terms included in this section have not been previously defined or they have meanings different than how these terms are understood under other conservation programs.

For example, NRCS is including a definition for "conservation treatment" that specifies that the practices, measures, and activities encompassed by a conservation treatment must meet HFRP purposes. NRCS expects that the actions needed to restore or enhance habitat for listed species may require the implementation of work more than the adoption of conservation practices.

currently identified in NRCS Field Office Technical Guides. In particular, the enrolled land will require a comprehensive system of restoration and management actions to meet HFRP purposes. For example, the terms and conditions of an Incidental Take Statement may require certain actions that are not NRCS conservation practices. Since there may be measures and activities that are known to improve habitat conditions and/or provide the basis for Landowner Protections, NRCS believes that the term conservation treatment describes the contents of an HFRP restoration plan more completely. Therefore, such practices, measures, and activities that improve habitat conditions for listed species or other species of concern are identified collectively as eligible for financial assistance as necessary conservation treatment.

In addition, the term "consultation" or "consult with" under these regulations would mean to talk things over for the purpose of providing information, to offer an opinion for consideration, or to meet for discussion or to confer. The Act calls for the Secretary of Agriculture to "consult with" a wide range of groups, individuals, and agencies. Groups the Secretary may consult with include non-industrial private forest landowners, other Federal agencies, State fish and wildlife agencies, State forestry agencies, other State conservation agencies, and non-profit conservation organizations. See 16 U.S.C. 6567. The term under HFRP does not have the same meaning as that same or similar term is understood to have under the ESA.

Section 502 of the Act, 16 U.S.C. 6572, also specifies that the implementation of HFRP will be in "coordination" with FWS and NMFS. NRCS proposes in this regulation to distinguish "coordination" from ESA "consultation." While NRCS will enter into ESA consultation with the Services where appropriate under section 7(a) of the ESA, the term "coordination" means something different for HFRP purposes. NRCS has defined "coordination" as NRCS taking the lead in making all decisions associated with implementing the program, involving FWS and NMFS, and utilizing information provided by these agencies in HFRP implementation.

NRCS is the leading agency in conservation planning in the Federal Government, and HFRP will utilize this technical capability of the Agency. As part of any easement or 10-year cost-share agreement, NRCS will develop a conservation plan that includes the schedule for implementation for conservation practices and measures and other conservation treatment that will be implemented to restore, enhance, and protect forest ecosystems enrolled in HFRP. NRCS has named the required conservation plan the "HFRP restoration plan."

NRCS has included the term "Landowner Protections" in the HFRP interim final rule. Such protections may include those associated with: (1) Incidental take authorization issued to NRCS pursuant to an Incidental Take Statement under section 7(b)(4) of the ESA, which automatically conveys to HFRP participants, and (2) similar protections associated with Safe Harbor Agreements under section 10(a)(1) of the ESA, as described in the SHA regulations issued by the FWS at 50 CFR 17.22 and 17.32, and the Safe Harbor policy issued by FWS and NMFS. Under either approach, Landowner Protections will most likely allow HFRP participants to provide beneficial habitat that may attract listed species to their property, or increase the number of individuals of listed species already present, while not violating the ESA if the program participant chooses to return the enrolled area to baseline conditions upon expiration of the term of the HFRP easement or restoration cost-share agreement.

Section 625.3 Administration

This section describes how the HFRP will be administered under the general supervision and direction of the Chief. The Chief delegates certain responsibilities to the NRCS State Conservationists.

NRCS will coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. The NRCS may also consult with the nonindustrial private forest landowners, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies; and nonprofit conservation organizations. However, this rule specifies that no determination by any of these entities will compel the NRCS to take any action which the NRCS determines will not serve the purposes of HFRP.

Section 625.4 Program Requirements

This section sets forth the requirements that program participants must meet to enroll lands into the HFRP. NRCS sets forth the basic requirements in paragraph (a) of this section. In general, NRCS will purchase conservation easements or enter into 10-year cost-share agreements with eligible landowners who voluntarily enroll in the program. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan.

If a program participant must take management measures that are in addition to the measures covered by the applicable HFRP restoration plan in order to obtain Landowner Protections, the cost of additional measures, as well as the cost of any permit, if incorporated into the HFRP restoration plan, are considered eligible for financial assistance as part of the HFRP restoration plan.

Paragraph (b) specifies the eligibility requirements of program participants. In particular, this interim final rule requires that a program participant be a landowner. However, a landowner includes those persons who have control of the land for the term of the program enrollment period.

To grant an easement, a landowner must possess clear title to the land or be able to provide subordination agreements from third parties with interest in the land. The landowner must also provide NRCS access to the easement area from a public road.

Paragraph (c) of this section defines the type of land that will be eligible for enrollment. Land is eligible if it is private land, including tribal land. The land must, subsequent to enrollment, restore, enhance, or otherwise measurably increase the likelihood of recovery of a listed species or other species of concern such as state-listed species or candidates for federal listing. Among the land types eligible for enrollment, NRCS may enroll other lands adjacent that would contribute significantly to the conservation benefit of the ecosystem or improve the practical administration of the program.

Paragraph (d) of this section describes lands that NRCS will not enroll into HFRP. These ineligible lands include lands owned by a governmental entity, lands already subject to an easement or deed restriction that provides for the protection of wildlife habitat, or lands where implementation of forest restoration practices would be futile due to on-site or off-site conditions. These on-site or off-site conditions could result from the presence of hazardous waste, incompatible land use patterns, or other factors that prove either impracticable or costly to address.

Section 625.5 Application Procedures

This section provides the sign-up notice and application procedures for a person to express their wish to enroll land into HFRP. Interested applicants can file an application pursuant to a

sign-up notice with their local USDA Service Center.

Paragraph (c) provides that the applicant, by filing an application, will allow an NRCS representative to come onto their property to determine whether the land is eligible and a priority for enrollment. NRCS will notify the applicant when the agency intends to visit the property, and the applicant, of course, is entitled to accompany the NRCS representative on any such visits.

Paragraph (d) provides the flexibility for an applicant to improve their ranking score by voluntarily accepting a lesser payment amount than that being offered by NRCS.

Section 625.6 Establishing Priority for Enrollment of Properties in HFRP

The State Conservationist will develop a ranking process. As required by section 502(g) of the Act, 16 U.S.C. 6572(g), NRCS will give priority to the enrollment of land that provides the greatest conservation benefit primarily to listed species under the ESA and secondarily to other species that are candidates for such listing, State-listed species, or species identified by the Chief for special funding considerations. NRCS will consider the cost-effectiveness of each 10-year cost-share agreement and easement so as to maximize the federal investment.

Section 625.7 Enrollment of Easements

This section of the interim final rule describes the process for enrolling easements into the program. NRCS will consider land enrolled into HFRP if an applicant responds to an NRCS offer of tentative acceptance with a notice of intent to continue. The applicant's notice of intent to continue will authorize NRCS to proceed with easement acquisition activities, including appraisal, survey, title clearance, and other matters. Prior to NRCS and the landowner executing the easement on the land, NRCS may withdraw its offer of enrollment because of title clearance issues, hazardous waste issues, lack of availability of funds, or other matters related to whether the enrollment of the particular parcel of land will meet program requirements.

Section 625.8 Compensation for Easements

This section of the interim final rule describes the level of compensation that will be provided to HFRP program participants for the enrollment of up to a 99-year easement, a 30-year easement, and a restoration cost-share agreement. As described earlier in this preamble, the compensation rates for easements will be based upon before-and-after appraisals and the duration of the easement.

Section 625.9 10-Year Cost-Share Agreements

This section of the interim final rule describes the terms and conditions of the 10-year cost-share agreement. In particular, a 10-year cost-share agreement will incorporate the provisions of the HFRP restoration plan, be for a period of 10 years, specify the requirements for operation and maintenance of applied practices and measures, and specify the extent to which NRCS will provide cost-share assistance for the adoption or implementation of the approved conservation treatment. This section also describes the limited circumstances under which a 10-year cost-share agreement can be terminated.

Section 625.10 Restoration Cost-Share Payments

This section of the interim final rule describes the availability of cost-share assistance for practices and measures identified in the HFRP restoration plan, including cost-share assistance for the implementation of practices and measures related to obtaining Safe Harbor Assurances and related permits. HFRP program participants can receive cost-share assistance for the implementation of approved practices and measures at varying rates, depending upon the duration of the easement or if enrollment is through a restoration cost-share agreement: (1) Up to 100% cost-share assistance for activities implemented on up to a 99-year easement; (2) up to 75% cost-share assistance for activities implemented on a 30-year easement; and (3) up to 50% cost-share assistance for activities implemented on land enrolled through a 10-year cost-share agreement.

Practices or measures eligible for cost-share assistance under HFRP shall be approved by NRCS, in coordination with FWS and NMFS. These practices will include those necessary to restore, enhance, or maintain habitat conditions or otherwise increase the likelihood of recovery of listed species, candidate, and other species identified by the Chief for special funding consideration.

Section 625.11 Easement Participation Requirements

This section of the interim final rule describes the responsibilities the program participant has by enrolling an easement into HFRP. An easement is an interest in land and is binding, for the duration of its term, upon the landowner and anyone claiming title, rights, or interests under the landowner. In particular, a program participant must grant an easement to the United States and agree to the restoration of the property in accordance with the goals and objectives of HFRP.

Additionally, the program participant must provide NRCS a right of access to the easement area sufficient for the NRCS to exercise the rights it acquires under the easement. By enrolling an easement into HFRP, a program participant agrees to the use of the easement area for the restoration, protection, enhancement, maintenance, and management of forest ecosystems and recovery of a listed species or other species of concern. NRCS may authorize a landowner subject to an HFRP easement to engage in certain activities if such activities are compatible with the purposes for which the easement was acquired.

Section 625.12 The HFRP Restoration Plan Development

This section of the interim final rule sets forth the terms and conditions under which NRCS will enter into a HFRP restoration plan. Eligible activities include land management, vegetative, and structural practices and measures in forestland ecosystems that will restore, enhance, or maintain habitat conditions or otherwise increase the likelihood of recovery of listed species, or candidate, state-listed or species of special concern as identified by the Chief. Specific activities eligible for payment will be determined by the NRCS at the State level in coordination with FWS and NMFS.

The HFRP restoration plan will specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed for forest ecosystems and recovery of listed species and other species selected by the Chief for special funding consideration.

Section 625.13 Modification of the HFRP Restoration Plan

This section of the interim final rule provides how the HFRP restoration plan may be modified.

Section 625.14 Transfer of Land

This section of the interim final rule provides how applications will be handled if the original applicant transfers the land that is encompassed by the application before the closing of the easement. In general, any transfer of the property prior to the landowner acceptance into the program will void the offer of enrollment. However, at the option of the State Conservationist, an

offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement or cost-share agreement terms and conditions.

NRCS will hold the new landowner responsible for assuring completion of all measures and practices required by the restoration plan. NRCS will make cost-share payments to the new landowner upon presentation of an assignment of rights or other evidence that title had passed. However, NRCS does not bear any responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor.

Sections 625.15 Through 625.19

These sections of the interim final rule are common provisions in NRCS easement and cost-share programs. They include how NRCS will handle violations and recovery of costs, including the ability to recover under a liquidated damages provision in 10-year cost-share agreements.

Any cost-share or easement payment or portion thereof due any person under HFRP will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

A person participating in the HFRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal procedures under 7 CFR part 614 for non-Title XII programs. Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in part 614. Additionally, any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and NRCS will only disclose such information as determined at the sole discretion of the NRCS in accordance with applicable law.

If NRCS determines that a person has employed a scheme or device to defeat the purposes of HFRP, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget (OMB) determined that this interim final rule is not significant and it was not reviewed by the Office of Management and Budget under Executive Order 12866.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because the Natural Resources Conservation Service (NRCS) is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Section 553(b)(B) of Title 5 of the United States Code exempts rules from notice and comment procedures if such rules would be "impracticable, unnecessary, or contrary to the public interest." NRCS hereby finds that there is "good cause" to proceed with interim final rule making because this rulemaking is to implement a pilot program effort of $2.5 million that Congress has authorized for FY 2006. The $2.5 million will be able to purchase only approximately 15 easements encompassing an estimated 3000 acres, and thus the scope of the rule is quite small compared to other NRCS program efforts where NRCS purchases over 1000 conservation easement encompassing over 150,000 acres annually. Additionally, many of the interim rule's provisions relate to acquisition of conservation easements and are based upon standard acquisition provisions utilized under other NRCS conservation easement programs. NRCS will base the final rule upon the experience gained from the pilot program effort and the public comments it receives pursuant to this rulemaking. Therefore, the 90-day comment period associated with this rulemaking will provide the public the opportunity to comment prior to NRCS implementing HFRP on a more regional or national scale. To ensure that NRCS has the regulatory framework in place for a pilot program effort for an FY 2006 sign-up, NRCS has determined that it is in the public interest for this interim rule to be in effect upon its publication in the **Federal Register**.

Environmental Analysis

An Environmental Assessment (EA) has been prepared to assist in determining whether this interim final rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the EA, NRCS has issued a Finding of No Significant Impact (FONSI). Copies of the EA and FONSI may be obtained from Diane Gelburd, Director, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. The HFRP EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess/HFRP/HFRP.html*. Written comments on the EA and FONSI should be sent to Diane Gelburd, Director, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or submit them via the Internet to *diane.gelburd@usda.gov*.

Paperwork Reduction Act

The forms that will be utilized to implement this regulation have previously been approved for use and OMB assigned the control number 0578–0013. NRCS estimates that HFRP results in the following changes to the current package:

- Increase of 26,020 respondents
- Increase of 23,926.3 responses
- Increase Burden Hours by 27,768.12 hours
- Increase in the average time to execute a form in the collection: 0.229 hours/14.03 minutes

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies in general, and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed in accordance with Executive

Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this rule. Before an action may be brought in a federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Executive Order 13132, Federalism

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, NRCS assessed the effects of this rulemaking action of State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

List of Subjects in 7 CFR Part 625

Administrative practice and procedure, Agriculture, Soil conservation.

■ For the reason stated in the preamble, NRCS is adding a new part 625 in Chapter VI of 7 CFR to read as follows:

PART 625—HEALTHY FORESTS RESERVE PROGRAM

Sec.

Authority: 16 U.S.C. 6571–6578.

§ 625.1 Purpose and scope.

(a) The purpose of the Health Forests Reserve Program (HFRP) is to assist landowners, on a voluntary basis, in restoring, enhancing, and protecting forestland resources on private lands through easements and 10-year cost-share agreements.

(b) The objectives of HFRP are to:

(1) Promote the recovery of endangered and threatened species under the ESA;

(2) Improve plant and animal biodiversity; and

(3) Enhance carbon sequestration.

(c) The regulations in this part set forth the policies, procedures, and requirements for the HFRP as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing applications for enrollment.

(d) The Chief of NRCS may implement HFRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Marianna Islands.

§ 625.2 Definitions.

The following definitions shall be applicable to this part:

Activity means an action other than a conservation practice that is included as a part of a restoration agreement; such as a measure, incremental movement on a conservation index or scale, or a pilot or assessment.

Biological diversity (biodiversity) means the variety and variability among living organisms and the ecological complexes in which they live.

Carbon sequestration means the long term storage of carbon in soil (as soil organic matter) or in plant material (such as in trees).

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act on behalf of the Chief.

Conservation treatment means any and all conservation practices, measures, activities, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities, including the restoration, enhancement, maintenance, or management of habitat conditions for HFRP purposes.

Consultation or "consult with" means to talk things over for the purpose of providing information; to offer an opinion for consideration; and/or to meet for discussion or to confer, while reserving final decision-making authority with NRCS.

Contract means the document that specifies the obligations and rights of any individual or entity who has been accepted for participation in the program.

Coordination means to obtain input and involvement from others while reserving final decision-making authority with NRCS.

Cost-share payment means the payment made by NRCS to a program participant or vendor to achieve the restoration, enhancement, and protection goals of enrolled land in accordance with the HFRP restoration plan.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the forestland and the conservation values of the property.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the HFRP.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest Service is an agency of the United States Department of Agriculture.

HFRP means the Healthy Forests Reserve Program authorized by Title V of the Healthy Forests Restoration Act of 2003.

HFRP restoration plan means the Health Forests Reserve Program restoration plan that identifies the conservation treatments that are scheduled for application to land enrolled in HFRP in accordance with NRCS standards and specifications.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Landowner means an individual or entity having legal ownership of land, including those who may be buying land under a purchase agreement or who have legal control of the land for the term of the HFRP enrollment period for which enrollment is sought.

Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a property.

Landowner Protections means protections and assurances made available to HFRP participants whose voluntary conservation activities result in a net conservation benefit for listed, candidate, or other species. Landowner Protections made available by the Secretary of Agriculture to HFRP participants may be provided under section 7(b)(4) or section 10(a)(1) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1536(b)(4), 1539(a)(1)). These Landowner Protections may be provided by NRCS in conjunction with meeting its responsibilities under section 7 of the ESA, and/or by FWS or NFMS through section 10 of the ESA. These Landowner Protections include a permit providing coverage for incidental take of species listed under the ESA. Landowner Protections also include assurances related to potential modifications of HFRR restoration plans and assurances related to the potential (unlikely) termination of Landowner Protections and any 10-year cost share agreement.

Liquidated damages means a sum of money stipulated in a restoration agreement which the participant agrees to pay NRCS if the participant fails to adequately complete the restoration agreement. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Maintenance means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

National Marine Fisheries Service (NMFS) is an agency of the United States Department of Commerce.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture.

Participant means an applicant who is a party to a 10-year cost share agreement or an option agreement to purchase.

Practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Private land means land that is not owned by a governmental entity, and includes land that is considered Indian trust lands.

Restoration means implementing any conservation practice (vegetative, management, or structural) or measure that improves the values and functions of forestland (native and natural plant communities).

Restoration agreement means a cost-share agreement between the program participant and NRCS to restore, enhance, and protect the functions and values of forestland for the purposes of HFRP under either an easement or a 10-year cost-share agreement enrollment option.

Safe Harbor Agreement means a voluntary arrangement between FWS or NMFS, and cooperating non-federal landowners under the authority of Section 10(a)(1) of the Endangered Species Act of 1973, 16 U.S.C. 1536(b)(4), 1539(a)(1). Under the Safe Harbor Agreement and an associated enhancement of survival permit, the non-federal property owner implements actions that will result in a net conservation benefit for species listed under the Act without the risk of further restrictions pursuant to section 9 of the Act, which prohibits take of listed species. The property owner also receives assurances related to modifications of the SHA or termination of the permit. (See "Landowner Protections," above.)

Sign-up notice means the public notification document that NRCS provides to describe the particular requirements for a specific HFRP sign-up.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

Technical service provider means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

§ 625.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) No delegation in this part to lower organizational levels shall preclude the Chief from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(d) The State Conservationist will develop the rates of compensation for an easement, a priority ranking process, and any related technical matters.

(e) The NRCS shall coordinate with FWS and NMFS in the implementation of the program and in establishing program policies. In carrying out this program, NRCS may consult with nonindustrial private forest landowners, the Forest Service and other Federal agencies, State fish and wildlife agencies, State forestry agencies, State environmental quality agencies, other State conservation agencies; and nonprofit conservation organizations. No determination by FWS, NMFS, the Forest Service, any Federal or State agency, conservation district, or other organization shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

§ 625.4 Program requirements.

(a) *General.* Under the HFRP, NRCS will purchase conservation easements from, or enter into 10-year cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of forestlands and associated lands. To participate in HFRP, a landowner will agree to the implementation of a HFRP restoration plan, the effect of which is to restore, protect, enhance, maintain, and manage the habitat conditions necessary to increase the likelihood of recovery of listed species under the Endangered Species Act (ESA), or measurably improve the well-being of species that are not listed as endangered or threatened under the ESA but are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding. NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of forestland functions and values. Specific restoration, protection, enhancement, maintenance, and management activities may be undertaken by the landowner or other NRCS designee.

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought; and

(2) Agree to provide such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(c) *Eligible land.* (1) The NRCS, in coordination with FWS or NMFS, shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration, enhancement, and protection of forest ecosystem functions and values when considering the cost of acquiring the easement and the restoration, protection, enhancement, maintenance, and management costs.

(2) Land shall be considered eligible for enrollment in the HFRP only if the NRCS determines that:

(i) Such private land is capable of supporting habitat for a selected species listed under Section 4 of the ESA; and

(ii) Such private land is capable of supporting habitat for a selected species not listed under Section 4 of the ESA but is candidate for such listing, or the selected species is State-listed species, or is a species identified by the Chief for special consideration for funding.

(3) NRCS may also enroll land adjacent to the restored forestland if the enrollment of such adjacent land would contribute significantly to the practical administration of the easement area, but not more than it determines is necessary for such contribution.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(d) *Ineligible land.* The following land is not eligible for enrollment in the HFRP:

(1) Lands owned by a governmental entity;

(2) Land subject to an easement or deed restriction that already provides for the protection of wildlife habitat or which would interfere with HFRP purposes, as determined by NRCS; and

(3) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

§ 625.5 Application procedures.

(a) *Sign-up process.* NRCS will publish an HFRP sign-up notice with sufficient time for individuals and entities to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(1) The geographic scope of the sign-up;

(2) Any additional program eligibility criteria that are not specifically listed in this part;

(3) Any additional requirements that participants must include in their HFRP applications and program agreements that are not specifically identified in this part;

(4) Information on the priority order of enrollment for funding;

(5) An estimate of the total funds NRCS expects to obligate under new program agreements during a given sign-up; and

(6) The schedule for the sign-up process, including the deadline(s) for applying.

(b) *Application for participation.* To apply for enrollment through an easement or 10-year cost-share agreement, a landowner must submit an application for participation in the HFRP during an announced period for such sign-up.

(c) *Preliminary agency actions.* By filing an application for participation, the applicant consents to an NRCS representative entering upon the land for purposes of determining land eligibility, and for other activities that are necessary or desirable for the NRCS to make offers of enrollment. The applicant is entitled to accompany an NRCS representative on any site visits.

(d) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in HFRP, an applicant may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ 625.6 Establishing priority for enrollment in HFRP.

(a) *Ranking considerations.* Based on the specific criteria set forth in a sign-up announcement and the applications for participation, NRCS, in coordination FWS and NMFS, may consider the following factors to rank properties:

(1) Estimated conservation benefit to habitat required by threatened or endangered species listed under Section 4 of the ESA;

(2) Estimated conservation benefit to habitat required by species not listed as endangered or threatened under Section 4 of the ESA but that are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding;

(3) Estimated improvement of biological diversity, if enrolled;

(4) Potential for increased capability of carbon sequestration, if enrolled;

(5) Availability of contribution of non-federal funds;

(6) Significance of forest ecosystem functions and values;

(7) Estimated cost-effectiveness of the particular restoration cost-share agreement or easement, and associated HFRP restoration plan; and

(8) Other factors identified in an HFRP sign-up notice.

(b) The NRCS may place higher priority on certain forest ecosystems based regions of the State or multi-State area where restoration of forestland may better achieve NRCS programmatic and sign-up goals and objectives.

(c) Notwithstanding any limitation of this part, NRCS may enroll eligible lands at any time in order to encompass project areas subject to multiple land ownership or otherwise to achieve program objectives. Similarly, NRCS may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the forest ecosystem and those adjacent landowners are unwilling to participate.

(d) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 625.7 Enrollment of easements.

(a) *Offers of enrollment.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue.

(b) *Effect of letter of intent to continue (enrollment).* An offer of tentative acceptance into the program does not bind NRCS or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to HFRP restoration plan activities. However, receipt of an executed letter of intent to continue will authorize NRCS to proceed with easement acquisition activities and the land will be considered enrolled into HFRP.

(c) *Acceptance of offer of enrollment.* An option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for

participation that may be required by NRCS.

(d) *Effect of the acceptance of the offer.* After the option agreement to purchase is executed by NRCS and the landowner, NRCS will proceed with the remaining activities necessary for NRCS to purchase an easement, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the HFRP restoration plan. If the landowner breaches an option agreement to purchase, NRCS is entitled to recover any costs, including administrative or technical costs, expended in reliance of the option agreement to purchase.

(e) *Withdrawal of offers.* Prior to execution and recordation by the United States and the landowner of the easement, NRCS may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified.

§ 625.8 Compensation for easements.

(a) *Establishment of rates.* (1) The State Conservationist may determine the maximum easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Assistant Chief and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.* (1) NRCS shall offer to pay not less than 75 percent nor more than 100 percent of the fair market value of the enrolled land during the period the land is subject to the easement less the fair market value of the land encumbered by the easement for easement payments for easements of not more than 99 years.

(2) NRCS shall offer to pay not more than 75 percent of the fair market value of the enrolled land less the fair market value of the land encumbered by the easement for 30-year easements.

(c) NRCS may accept and use contributions of non-federal funds to make payments under this section.

(d) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Annual easement payments may be made in no more than 10 annual payments of equal or unequal size, as agreed to between NRCS and the landowner.

(e) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by NRCS. The State Conservationist may establish maximum payments to reimburse landowners for reasonable expenses.

(f) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(g) *Per acre payments.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 625.9 10-year restoration cost-share agreements.

(a) The restoration plan developed under § 625.12 forms the basis for the 10-year cost-share agreement and is incorporated therein.

(b) A 10-year cost-share agreement will:

(1) Incorporate all portions of a restoration plan;

(2) Be for a period of 10 years;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the agreement and HFRP;

(6) Be signed by the participant. When the participant is not the fee title owner, concurrence from the fee title owner is required;

(7) Identify the amount and extent of cost-share assistance that NRCS will provide for the adoption or implementation of the approved conservation treatment identified in the restoration plan; and

(8) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) Once the participant and NRCS have signed a 10-year cost-share agreement, the land shall be considered enrolled in HFRP.

(d) The State Conservationist may, by mutual agreement with the parties to the 10-year cost-share agreement, consent to the termination of the restoration agreement where:

(1) The parties to the 10-year cost-share agreement are unable to comply with the terms of the restoration agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the 10-year cost-share agreement would work a severe hardship on the parties to the agreement;

(3) Termination of the 10-year cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(e) If a 10-year cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the 10-year cost-share agreement in a proportion appropriate to the effort the participant has made to comply with the restoration agreement, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the agreement.

§ 625.10 Cost-share payments.

(a) NRCS may share the cost with landowners of restoring land enrolled in HFRP as provided in the HFRP restoration plan. The HFRP restoration plan may include periodic manipulation to maximize wildlife habitat and preserve forest ecosystem functions and values over time and measures that are needed to provide the Landowner Protections under section 7(b)(4) or section 10(a)(1) of the ESA, including the cost of any permit.

(b) Landowner Protections may be made available to landowners enrolled in the HFRP who agree, for a specified period, to restore, protect, enhance, maintain, and manage the habitat conditions on their land in a manner that is reasonably expected to result in a net conservation benefit that contributes to the recovery of listed species under the Endangered Species Act (ESA). These protections operate with lands enrolled in the HFRP and are valid for as long as the landowner is in compliance with the terms and conditions of such assurances, any associated permit, the easement, and the restoration agreement.

(c) If the Landowner Protections, or any associated permit, require the adoption of a practice or measure in addition to the practices and measures identified in the applicable HFRP restoration plan, NRCS and the landowner will incorporate the practice or measure into the HFRP restoration plan as an item eligible for cost-share assistance.

(d) Failure to perform planned management activities can result in violation of the easement, 10-year cost-share agreement, or the agreement under which Landowner Protections have been provided. NRCS will work with landowners to plan appropriate management activities.

(e) The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing practices or implementing measures specified in the HFRP restoration plan:

(1) On enrolled land subject to an easement of not more than 99 years, NRCS shall offer to pay not less than 75 percent nor more than 100 percent of the average cost;

(2) On enrolled land subject to a 30-year easement, NRCS shall offer to pay not more than 75 percent of the average cost; and

(f) On enrolled land subject to a 10-year cost-share agreement without an associated easement, NRCS shall offer to pay not more than 50 percent of the average costs.

(g) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or measure, or an identifiable component of the practice has been established in compliance with appropriate standards and specifications. Identified practices and measures may be implemented by the landowner or other designee.

(h) Cost-share payments may be made for the establishment and installation of additional eligible practices and measures, or the maintenance or replacement of an eligible practice or measure, but only if NRCS determines the practice or measure is needed to meet the objectives of HFRP, and the failure of the original practices or measures was due to reasons beyond the control of the landowner.

(i) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

§ 625.11 Easement participation requirements.

(a) To enroll land in HFRP through the 99-year or 30-year enrollment option, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with HFRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of habitat for listed species within a forest ecosystem's functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the HFRP restoration plan. In addition, the easement shall grant to the United States, through the NRCS:

(1) A right of access to the easement area;

(2) The right to permit compatible uses of the easement area, which may include such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the purposes for which the easement was established;

(3) The right to determine compatible uses on the easement area and specify the amount, method, timing, intensity and duration of the compatible use;

(4) The rights, title and interest to the easement area as specified in the conservation easement deed; and

(5) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the NRCS. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the NRCS.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated agreement or contract;

(3) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(4) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and

(5) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

§ 625.12 The HFRP restoration plan development.

(a) The development of the HFRP restoration plan shall be made through an NRCS representative, in consultation with the program participant and with coordination of input from the FWS and NMFS, where applicable.

(b) The HFRP restoration plan shall specify the manner in which the enrolled land under easement or 10-year cost-share agreement shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

(c) Eligible restoration practices and measures may include land management, vegetative, and structural practices and measures that will restore and enhance habitat conditions for listed species, candidate, State-listed, and other species identified by the Chief for special funding consideration. To the extent practicable, eligible practices and measures will improve biodiversity and increase the sequestration of carbon. NRCS, in coordination with FWS, will determine the conservation practices and measures. NRCS will determine payment rates and cost-share percentages within statutory limits that will be available for restoration. A list of eligible practices will be available to the public.

§ 625.13 Modification of the HFRP restoration plan.

Consistent with the easement and applicable law, the State Conservationist may approve modifications to the HFRP restoration plan that do not modify or void provisions of the easement, restoration agreement, or Landowner Protections. NRCS may obtain and receive input from the landowner and coordination from FWS and NMFS to determine whether a modification is justified. Any HFRP restoration plan modification must meet HFRP program objectives, and must result in equal or greater wildlife benefits and ecological and economic values to the United States. Modifications to the HFRP restoration plan which are substantial and affect provisions of the easement, restoration

cost-share agreement, or Landowner Protections will require agreement from the landowner, FWS or NMFS, as appropriate, and may require execution of an amended easement and restoration cost-share agreement and modification to the protections afforded by the safe harbor assurances.

§ 625.14 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the applicant's acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) *Payments to landowners.* (1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless NRCS receives an assignment of proceeds.

(2) The new landowner shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) *Claims to payments.* With respect to any and all payments owed to a person, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 625.15 Violations and remedies.

(a) *Easement Violations.* (1) In the event of a violation of the easement or any associated agreement involving a landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(2) Notwithstanding paragraph (a)(1) of this section, the NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the NRCS when such actions are deemed necessary to protect important listed species and forest ecosystem functions and values or other rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants, associated restoration agreement, or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *10-year Cost-Share Agreement Violations.* (1) If the NRCS determines that a participant is in violation of the terms of a 10-year cost-share agreement, or documents incorporated by reference into the 10-year cost-share agreement, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the cost-share agreement and attachments thereto. If the violation continues, the State Conservationist may terminate the 10-year cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, an agreement termination is effective immediately upon a determination by the State Conservationist that the participant has: Submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficientiy purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights for future payments under the cost-share agreement, and must refund all or part of the payments received, plus interest, and liquidated damages. The State Conservationist may require only partial refund of the payments received if a previously installed practice or measure can function independently, is not affected by the violation or other practices or measures that would have been installed under the cost-share agreement, and the participant agrees to operate and maintain the installed practice or measure for the life span of the practice or measure.

(4) If NRCS terminates a 10-year cost-share agreement due to breach of contract, or the participant voluntarily terminates the 10-year cost-share agreement before any cost-share payments have been made, the participant will forfeit all rights for further payments under the 10-year cost-share agreement, and must pay such liquidated damages as are prescribed in the restoration agreement. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(5) When making any 10-year cost-share agreement termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the cost-share agreement, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(6) The participant may voluntarily terminate a 10-year cost-share agreement, without penalty or repayment, if the State Conservationist determines that the cost-share agreement terms and conditions have been fully complied with before termination of the cost-share agreement.

§ 625.16 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 625.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 625.18 Appeals.

(a) A person participating in the HFRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property

value are considered confidential information, and shall only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

§ 625.19 Scheme and device.

(a) If it is determined by NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A person who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed in Washington, DC, on May 8, 2006.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 06–4587 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–16–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective May 17, 2006. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 5.75 percent to 6.00 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 6.25 percent to 6.50 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the Federal funds rate (from 4.75 percent to 5.00 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Economic growth has been quite strong so far this year. The Committee sees growth as likely to moderate to a more sustainable pace, partly reflecting a gradual cooling of the housing market and the lagged effects of increases in interest rates and energy prices.
>
> As yet, the run-up in the prices of energy and other commodities appears to have had only a modest effect on core inflation, ongoing productivity gains have helped to hold the growth of unit labor costs in check, and inflation expectations remain contained. Still, possible increases in resource utilization, in combination with the elevated prices of energy and other commodities, have the potential to add to inflation pressures.
>
> The Committee judges that some further policy firming may yet be needed to address inflation risks but emphasizes that the extent and timing of any such firming will depend importantly on the evolution of the economic outlook as implied by incoming information. In any event, the Committee will respond to changes in economic prospects as needed to support the attainment of its objectives.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal reserve bank	Rate	Effective
Boston	6.00	May 10, 2006.
New York	6.00	May 10, 2006.
Philadelphia	6.00	May 10, 2006.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal reserve bank	Rate	Effective
Cleveland	6.00	May 10, 2006.
Richmond	6.00	May 10, 2006.
Atlanta	6.00	May 10, 2006.
Chicago	6.00	May 10, 2006.
St. Louis	6.00	May 11, 2006.
Minneapolis	6.00	May 10, 2006.
Kansas City	6.00	May 11, 2006.
Dallas	6.00	May 10, 2006.
San Francisco	6.00	May 10, 2006.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal reserve bank	Rate	Effective
Boston	6:50	May 10, 2006.
New York	6.50	May 10, 2006.
Philadelphia	6.50	May 10, 2006.
Cleveland	6.50	May 10, 2006.
Richmond	6.50	May 10, 2006.
Atlanta	6.50	May 10, 2006.
Chicago	6.50	May 10, 2006.
St. Louis	6.50	May 11, 2006.
Minneapolis	6.50	May 10, 2006.
Kansas City	6.50	May 11. 2006.
Dallas	6.50	May 10, 2006.
San Francisco	6.50	May 10, 2006.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 11, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–4592 Filed 5–16–06; 8:45 am]

BILLING CODE 6210–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1251]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board is publishing a technical amendment to Regulation B (Equal Credit Opportunity Act) to correct the address of the Office of the Comptroller of the Currency as published in the **Federal Register** on March 7, 2006.

DATES: *Effective Date:* May 17, 2006.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** on March 7, 2006, (71 FR 11296) which updated the addresses of certain Federal enforcement agencies. The Board is publishing this notice to correct the address of the Office of the Comptroller of the Currency.

12 CFR Chapter II

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Sex discrimination.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 202 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

■ 2. Appendix A is amended by revising the following Federal Enforcement Agency's address to read as follows:

Appendix A to Part 202—Federal Enforcement Agencies

* * * * *

National banks, and federal branches and federal agencies of foreign banks: Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–9050

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 11, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–4593 Filed 5–16–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23215; Directorate Identifier 2005–NM–212–AD; Amendment 39–14596; AD 2006–10–12]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 airplanes and Model Avro 146–RJ airplanes. This AD requires repetitive replacement of the elevator servo tab hinge bearings, elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings. This AD results from reported incidents of flight control surface restrictions due to the deterioration of flight control surface bearings. We are issuing this AD to prevent corrosion of flight control surface bearings and freezing of moisture inside the bearings, due to loss of lubrication in the bearings, which could lead to flight control restrictions and result in reduced controllability of the airplane.

DATES: This AD becomes effective June 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 21, 2006.

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, VA 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 airplanes and Model Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 72938). That NPRM proposed to require repetitive replacement of the elevator servo tab hinge bearings, elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings.

Comments

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

Request To Reference Revision 1 of Service Bulletin

Air Wisconsin Airlines requests that we reference Revision 1 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, dated October 5, 2005, as the appropriate source of service information for accomplishing the actions in the NPRM. We referenced the original issue of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, dated June 3, 2004, in the NPRM. The commenter states that Revision 1 of the service bulletin is divided into two parts, where the actions proposed in the NPRM are specified in Part 1 of the service bulletin and other actions—not related to the NPRM—are specified Part 2. The commenter also states that Revision 1 corrects a typo to a certain part number.

We agree. We have reviewed Revision 1 of the service bulletin and have determined that the procedures in Revision 1 are identical to those specified in the original issue of the service bulletin. The actions specified in Part 2 of the Accomplishment Instructions of Revision 1 are identical to other actions specified in the original issue of the service bulletin that are not required for addressing the unsafe condition of this AD. (Those actions also were not mandated by British airworthiness directive G–2005–0014, dated May 31, 2005.) Therefore, we have revised paragraph (f) of this AD to reference only Part 1 of the Accomplishment Instructions of Revision 1. We have also added a new paragraph (g) to this AD to give credit for actions done in accordance with the original issue of the service bulletin; we have reidentified the subsequent paragraphs in this AD accordingly.

Request To Identify the Part Numbers of Certain Bearings

Modification and Replacement Parts Association (MARPA) requests that we either publish the referenced service bulletin with the AD, or incorporate by reference (IBR) it with the NPRM. If we IBR rather than publish the referenced service bulletin, then MARPA further requests that we identify the manufacturer and part numbers of the affected bearings in this AD. Unless we specify this information in the AD, MARPA states that there is no practical method for determining whether alternative parts to the affected bearings exist (under 14 CFR 21.303) without obtaining the necessary proprietary service bulletin.

MARPA also comments on our practice of IBR and referencing proprietary service information. MARPA asserts that if we IBR proprietary service information with a public document, such as an AD, then that service information loses its protected copyright status and becomes a public document. MARPA also claims that IBR requires we provide a copy of the relevant service information to the Director of the Federal Register before the NPRM can be published. MARPA further states that: "Merely referencing a service document without incorporation thus becomes an 'end run' around the publication requirement while still requiring possession of a proprietary document in order to comply with the law." MARPA believes our practice of IBR is flawed legally.

We do not agree to specify the affected part numbers in this AD. It is our general practice to reference the appropriate service information, since the affected part numbers are clearly specified in the referenced information. Not only does it appear redundant to repeat part numbers in an AD, but if there was a large number of parts involved, it would increase the risk of error in repeating those part numbers in an AD. We are currently in the process of reviewing issues surrounding the posting of service bulletins on the Department of Transportation's Docket Management System (DMS) as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. To delay this AD would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 21 airplanes of U.S. registry. The actions in this AD take about 75 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $3,192 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $169,407, or $8,067 per airplane, per replacement cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–10–12 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14596. Docket No. FAA–2005–23215; Directorate Identifier 2005–NM–212–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from reported incidents of flight control surface restrictions due to the deterioration of flight control surface bearings. We are issuing this AD to prevent corrosion of flight control surface bearings and freezing of moisture inside the bearings, due to loss of lubrication in the bearings, which could lead to flight control restrictions and result in reduced controllability of the airplane.

Compliance

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

Repetitive Replacement

(f) Before the accumulation of 96 months on a bearing since new, or within 16 months after the effective date of this AD, whichever is later: Replace the elevator servo tab hinge bearings, the elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings, in accordance with Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, Revision 1, dated October 5, 2005. Repeat the replacements thereafter at intervals not to exceed 96 months.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, dated June 3, 2004, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) British airworthiness directive G–2005–0014, dated May 31, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, Revision 1, dated October 5, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, , Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4543 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22254; Directorate Identifier 2005–NM–001–AD; Amendment 39–14598; AD 2006–10–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; Model MD–88 Airplanes; Model MD–90–30 Airplanes; and Model 717–200 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This AD requires an inspection to determine the part number of the upper and lower stop pad support fittings of all the lower cargo doors, repetitive inspections of all early configuration stop pad support fittings, and corrective action if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from a report of cracks found in the area of the upper and lower stop pad support fittings of the cargo door pan on numerous airplanes. We are issuing this AD to prevent cracks in the cargo door pan, which could result in the inability to fully pressurize an airplane, possible pressure loss, or possible rapid decompression of the airplane.

DATES: This AD becomes effective June 21, 2006.

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

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes (hereafter referred to as Model DC–9 airplanes); Model MD–88 airplanes; Model MD–90–30 airplanes; and Model 717–200 airplanes. That NPRM was published in the **Federal Register** on September 1, 2005 (70 FR 52046). That NPRM proposed to require an inspection to determine the part number (P/N) of the upper and lower stop pad support fittings of all the lower cargo doors, repetitive inspections of all early configuration stop pad support fittings, and corrective action if necessary. That NPRM also proposed to provide an optional terminating action for the repetitive inspections.

Comments

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

Request To Use New Service Information

Boeing requests that we reference Boeing Service Bulletin DC9–52–189, Revision 2, dated December 20, 2005, in paragraph (f)(1) of the NPRM as the appropriate source of service information for certain airplanes. (We referenced Revision 01, dated March 20, 2003, as an appropriate source of service information in the NPRM.)

We agree. We have reviewed Revision 2 of Boeing Service Bulletin DC9–52–189, which contains procedures identical to those in Revision 01. We, therefore, have revised paragraphs (f)(1) and (h) and Table 1 of this AD to reference Revision 2 of the service bulletin.

Also since issuance of the NPRM, Boeing has published Boeing Service Bulletin 717–52–0007, Revision 1, dated March 2, 2006; and Boeing Service Bulletin MD90–52–014, Revision 1, dated March 22, 2006. For certain airplanes, we referenced the original issues of these service bulletins, both dated December 14, 2004, as appropriate sources of service information in the NPRM. The procedures in Revision 1 of Boeing Service Bulletin 717–52–0007 are identical to those in the original issue of that service bulletin, except that Revision 1 recommends inspecting only the aft lower cargo door, whereas the original issue recommends inspecting both the forward and aft lower cargo doors. Boeing, however, has verified that the unsafe condition of this AD has been corrected on the forward cargo doors for all the affected Model 717–200 airplanes. Therefore, we have revised paragraph (f)(3) of this AD to reference Revision 1 of Boeing Service Bulletin 717–52–0007.

The procedures in Revision 1 of Boeing Service Bulletin MD90–52–014 are identical to those in the original issue of that service bulletin. We, therefore, have revised paragraph (f)(2) of this AD to reference Revision 1 of Boeing Service Bulletin MD90–52–014. Consequently, we have also revised paragraph (m) of this AD to give credit for actions done previously in accordance with Revision 01 of Boeing Service Bulletin DC9–52–189, the original issue of Boeing Service Bulletin 717–52–0007, and the original issue of Boeing Service Bulletin MD90–52–014, as applicable.

Request To Revise Certain Compliance Times

Boeing and Northwest Airlines (NWA) request that we revise certain compliance times to match those specified in Revision 2 of Boeing Service Bulletin DC9–52–189. NWA would like the compliance times for the repetitive inspections of early configuration stop pad fittings changed from units of flight hours to landings. We infer NWA is referring to the inspections in paragraphs (g)(1) and (g)(2) of the NPRM. NWA further requests that, for Group 2 airplanes, we extend the compliance time for inspecting to determine the P/N of the stop pad fittings from 300 flight hours to within 3,900 landings from the last general visual inspection. We infer that NWA is referring to the compliance time specified in the first row of Table 1 of the NPRM. As justification, NWA states Revision 2 of Boeing Service Bulletin DC9–52–189 (which was published after issuance of the NPRM) recommends a compliance time of 18 months. Based on its maintenance program for Model DC–9 airplanes, NWA states that 18 months is approximately equivalent to 3,900 landings. Boeing specifically requests the following:

- For the inspection to determine the P/N of the stop pad fittings, specified in Table 1 of the NPRM: For Group 2, 3, and 4 airplanes, extend the compliance time from 300 flight hours to within 18 months after the effective date of the AD. For Model MD–90–30 and Model 717–200 airplanes, change the compliance times from flight hours to flight cycles.
- For repetitive inspections of early configuration stop pad fittings for cracking on certain airplanes, specified in Table 2 of the NPRM: For airplanes that have been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11, change the compliance times from flight hours to flight cycles. For airplanes that have not been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11, extend the compliance time from 300 flight hours to within 18 months after the effective date of the AD.
- For the initial inspection of early configuration stop pad fittings for cracking on other certain airplanes if applicable, specified in paragraph (g) of the NPRM: Delete the compliance time of 300 flight hours.

As justification, Boeing states that the service issue is driven by flight cycles, not flight hours. Boeing further states that the new compliance times of 18 months better correspond with a C-check, and that its analysis supports extending the compliance time.

We agree to revise the compliance times in paragraphs (g)(1) and (g)(2) and in Tables 1 and 2 of this AD, as proposed by the commenters. These changes agree with compliance times recommended in Revision 2 of Boeing Service Bulletin DC9–52–189, Revision 1 of Boeing Service Bulletin 717–52–0007, and Revision 1 of Boeing Service Bulletin MD90–52–014, as applicable.

However, we do not agree to delete the compliance time of 300 flight hours from paragraph (g) of this AD for the

initial inspection of any early configuration stop pad support fitting for cracking if applicable. For certain Model DC–9 airplanes and Model MD–88 airplanes, we have added a third column to Table 1 of this AD to require accomplishing the initial inspection for cracking "before further flight" after the inspection to determine the P/N of the stop pad support fittings. We have determined that we no longer need to provide a grace period of 300 flight hours for certain Model DC–9 airplanes and Model MD–88 airplanes because we extended the compliance time for inspecting to determine the P/N from 300 flight hours to 18 months.

For Model MD–90–30 airplanes and Model 717–200 airplanes, this AD does allow a grace period of 300 flight hours to accomplish the initial inspection for cracking, as proposed by the NPRM. We have moved the compliance time for these airplanes to the third column of Table 1 of this AD. To reduce the compliance time of the NPRM for these airplanes would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments subsequently received, and eventually issuing a final rule. That procedure could take as long as 4 months. In comparing the compliance date of the final rule after completing such a procedure with the compliance date of this final rule as issued, we find the increment in time minimal. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the NPRM, we have determined that further delay of this final rule is not appropriate.

Request To Revise End-Level Effect

Boeing requests that we revise the end-level effect of the unsafe condition on the affected airplanes in the Summary, Discussion, and paragraph (d) of the NPRM. The commenter states that cracks in the cargo door pan could result in the inability to fully pressurize an airplane "or possible pressure loss," instead of "and possible rapid decompression of the airplane" as we stated in the NPRM. Boeing states that the possibility of rapid decompression is remote because cracking in the surrounding area would mostly likely prevent pressurization of the airplane prior to reaching altitude. Boeing further states that if a leak were to occur while the airplane is pressurized, the cabin pressurization system may be able to overcome the leak, or at worst, may result in pressure reduction to a point that the cabin pressurization system could sustain.

We agree that the inability to pressurize the airplane or pressure loss in-flight are both more likely to occur than rapid decompression of the airplane. However, we do not agree that the possibility of rapid decompression should be excluded from the end-level effect of the unsafe condition. Therefore, we have revised the Summary section and paragraph (d) of this AD to include possible pressure loss as one end-level effect. We point out that the Discussion section of the NPRM is not retained in the AD.

Request To Correct Alternative Method of Compliance (AMOC) Paragraph

Boeing requests that we delete citation of 14 CFR 25.571, Amendment 45, from the AMOC paragraph for McDonnell Model MD–90–30 airplanes and Model 717–200 airplanes. Boeing states that paragraph (o)(2) of the NPRM should cite 14 CFR 25.571, Amendment 25–45, for McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.

We agree that we do not need to cite 14 CFR 25.571, Amendment 45, for Model MD–90–30 airplanes and Model 717–200 airplanes, since damage tolerance requirements are included in the certification basis of those airplanes. We have revised the AMOC paragraph of this AD accordingly.

Request To Correct Reference to Aircraft Maintenance Manual (AMM)

AirTran Airways states that Boeing Service Bulletin 717–52–0007, dated December 14, 2004, references the incorrect chapter of the Boeing 717 AMM for adjustment of the forward and aft lower cargo doors. According to the commenter, the correct reference is Chapter 52–31–01 of the Boeing 717 AMM. We infer AirTran Airways requests that we correct this reference in the AD.

We agree. Boeing has confirmed that the original issue of the service bulletin should have referenced Chapter 52–31–01 of the Boeing 717 AMM. Boeing has corrected the reference in Revision 1 of the service bulletin, which we reference as an appropriate source of service information in paragraph (f)(3) of this AD. As stated previously, the original issue of the service bulletin is now referenced in paragraph (m)(3) of this AD to give credit for previous actions done in accordance with the original issue of the service bulletin; that paragraph refers operators to the correct chapter of the AMM.

Request To Identify the Method for Repairing Cracking on Model 717–200 Airplanes

AirTran Airways also requests that we identify the FAA-approved method for repairing cracking found on the cargo door pans of Model 717–200 airplanes. The commenter would like us to make this method available before the initial threshold of the first inspection, in order to reduce airplane downtime. We infer AirTran Airways would like the repair added to paragraph (i) of this AD.

We do not agree, at this time, to identify the FAA-approved method for repairing cracking found on Model 717–200 airplanes. It is unlikely that cracking will be found immediately on the cargo door pans for these airplanes, since the airplane fleet of Model 717–200 airplanes has accumulated fewer total flight cycles, as compared to when cracking was found on the cargo door pans of Model DC–9 airplanes. Operators should be able to locate and replace any early configuration stop pad fittings before cracking initiates in a cargo door pan. Furthermore, the cargo doors on the Model 717–200 airplanes are similar to those on the Model DC–9 airplanes. Should cracking be found on the cargo door pan of a Model 717–200 airplane, it is likely that an operator will be able to use one of the existing repair configurations developed and approved previously for a Model DC–9 airplane. Therefore, no change to this AD is necessary in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 2,016 airplanes of the affected design in the worldwide fleet. This AD affects about 1,586 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators, at an average labor rate of $65 per hour, to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine P/N for Group 2, 3, and 4 airplanes identified in Boeing Service Bulletin DC9–52–189; Model MD–90–30 airplanes; and Model 717–200 airplanes.	1	$65	1,218	$79,170.
Inspection for cracks for Group 1 airplanes identified in Boeing Service Bulletin DC9–52–189, per inspection cycle.	4	$260, per inspection cycle	368	$95,680, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–10–14 McDonnell Douglas: Amendment 39–14598. Docket No. FAA–2005–22254; Directorate Identifier 2005–NM–001–AD.

Effective Date

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

Affected ADs

(b) Accomplishing paragraph (g) or (h), as applicable, of this AD terminates certain requirements of AD 96–10–11, amendment 39–9618, as specified in McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes; and

(2) Model 717–200 airplanes, as identified in Boeing Service Bulletin 717–52–0007, Revision 1, dated March 2, 2006.

Unsafe Condition

(d) This AD was prompted by a report of cracks found in the area of the upper and lower stop pad support fittings of the cargo door pan on numerous airplanes. We are issuing this AD to prevent cracks in the cargo door pan, which could result in the inability to fully pressurize an airplane, possible pressure loss, or possible rapid decompression of the airplane.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the following service bulletins, as applicable:

(1) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: Boeing Service Bulletin DC9–52–189, Revision 2, dated December 20, 2005;

(2) For Model MD–90–30 airplanes: Boeing Service Bulletin MD90–52–014, Revision 1, dated March 22, 2006; and

(3) For Model 717–200 airplanes: Boeing Service Bulletin 717–52–0007, Revision 1, dated March 2, 2006.

Determine Part Numbers (P/Ns) and Inspect if Necessary

(g) For the airplanes identified in Table 1 of this AD: At the compliance time specified in Table 1 of this AD, inspect to determine the part number of the upper and lower stop pad support fittings of the lower cargo doors, in accordance with the Accomplishment Instructions of the service bulletin, as applicable. If new configuration or new upper and lower stop pad support fittings, as identified in the applicable service bulletin, are found installed on all lower cargo doors, then no further action is required by this paragraph. If any early configuration stop pad support fitting is found installed on any lower cargo door, at the applicable compliance time specified in Table 1 of this AD, do the inspection specified in either paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of the service bulletin, until the

replacement specified in paragraph (k) of this AD is accomplished.

(1) Do a general visual inspection for cracks in any lower cargo door having an early configuration stop pad support fitting. Repeat the general visual inspection thereafter at intervals not to exceed 1,700 flight cycles.

(2) Do an eddy current inspection for cracks in any lower cargo door having an early configuration stop pad support fitting. Repeat the eddy current inspection thereafter at intervals not to exceed 3,900 flight cycles.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

TABLE 1.—COMPLIANCE TIMES FOR CERTAIN AIRPLANES

Applicable airplanes	Inspection to determine P/N	Initial inspection of early configuration stop pad support fitting, if applicable
Airplanes identified as Group 2, 3, and 4 in paragraph 1.A. of Boeing Service Bulletin DC9–52–189, Revision 2, dated December 20, 2005.	Within 18 months after the effective date of this AD.	Before further flight.
Model MD–90–30 airplanes and Model 717–200 airplanes.	Before the accumulation of 25,000 total flight cycles, or within 3,900 flight cycles after the effective date of this AD, whichever is later.	Within 300 flight hours.

Repetitive Inspections for Certain Airplanes

(h) For the airplanes identified as Group 1 in paragraph 1.A. of Boeing Service Bulletin DC9–52–189, Revision 2, dated December 20, 2005: At the applicable compliance time specified in Table 2 of this AD, do the inspection specified in either paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection thereafter at the interval specified in paragraph (g)(1) or (g)(2), as applicable, until the replacement specified in paragraph (k) of this AD is accomplished. Inspections also may be done in accordance with the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991; or Revision 6, dated January 11, 1993.

TABLE 2.—COMPLIANCE TIMES FOR INITIAL INSPECTION OF CERTAIN OTHER AIRPLANES

For airplanes that have—	Compliance time
Been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11 as specified in Phase I of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991; or Revision 6, dated January 11, 1993.	Within 1,700 flight cycles after the last general visual inspection, or within 3,900 flight cycles after the last eddy current inspection, as applicable.
Not been inspected before the effective date of this AD in accordance with paragraph (b) of AD 96–10–11 as specified in Phase I of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991; or Revision 6, dated January 11, 1993.	Within 18 months after the effective date of this AD.

Corrective Actions for Certain Airplanes

(i) For Model MD–90–30 airplanes and Model 717–200 airplanes: If any crack is found in the door jamb or jamb structure of a lower cargo door during any inspection required by paragraph (g)(1) or (g)(2) of this AD, and the service bulletin specifies contacting Boeing for appropriate action, before further flight, repair the crack using a method in accordance with the procedures specified in paragraph (o) of this AD.

Corrective Actions for Certain Other Airplanes

(j) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: If any crack is found during any inspection required by paragraph (g)(1), (g)(2), or (h) of this AD, do the corrective action at the applicable compliance time specified in paragraph 1.E. of the service bulletin, in accordance with the Accomplishment Instructions of the service bulletin, as applicable.

Optional Replacement of Stop Pad Support Fittings

(k) For all airplanes: Replacement of all early configuration stop pad support fittings installed on a lower cargo door with new configuration or new stop pad support fittings, as identified in the applicable service bulletin; and reidentification of the applicable lower cargo door; in accordance with the Accomplishment Instructions of the applicable service bulletin; terminates the repetitive inspections required by paragraphs (g)(1), (g)(2), and (h) of this AD, as applicable, for that lower cargo door only.

Parts Installation

(l) For all airplanes: As of the effective date of this AD, no person may install an early configuration stop pad support fitting having P/N 3925046–1, –501, –505, –507, or -509, or P/N 3926046–1 or –501, on any airplane.

Credit for Previous Service Bulletin

(m) Actions done before the effective date of this AD in accordance with the applicable service bulletin specified in paragraph (m)(1), (m)(2), or (m)(3) of this AD, are acceptable for compliance with the corresponding requirements of this AD.

(1) Boeing Service Bulletin DC9–52–189, dated August 10, 2001; or Revision 01, dated March 20, 2003.

(2) Boeing Service Bulletin MD90–52–014, dated December 14, 2004.

(3) Boeing Service Bulletin 717–52–0007, dated December 14, 2004, except where the service bulletin refers to Chapter 52–31–00 of the Boeing 717 Aircraft Maintenance Manual for instructions on adjusting the forward and aft lower cargo doors, instead refer to Chapter 52–31–01 for those instructions.

Terminating Action for Certain Requirements of AD 96–10–11

(n) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes: Accomplishing the replacement specified in paragraph (k) of this AD for the forward and aft lower cargo doors terminates the repetitive inspections of the forward and

aft lower cargo doors for cracks required by paragraph (b) of AD 96–10–11 as specified in McDonnell Douglas DC–9 Service Bulletin 52–89, Revision 5, dated February 26, 1991.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD. For McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: The repair also must meet 14 CFR 25.571, Amendment 45.

Material Incorporated by Reference

(p) You must use the service information specified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Service Bulletin Revision 717–52–0007	Revision 1	March 2, 2006.
Boeing Service Bulletin DC9–52–189	Revision 2	December 20, 2005.
Boeing Service Bulletin MD90–52–014	Revision 1	March 22, 2006.

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4546 Filed 5–16–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22510; Directorate Identifier 2004–NM–32–AD; Amendment 39–14600; AD 2006–10–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs); one AD is applicable to all Boeing Model 747 airplanes and the other AD is applicable to certain Boeing Model 747 airplanes. The first AD currently requires repetitive inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, and repair if necessary. The other AD currently requires repetitive inspections for cracking of the upper skin of the outboard and center sections of the horizontal stabilizer and the rear spar structure, hinge fittings, terminal fittings, and splice plates; and repair if necessary. This new AD adds, for certain airplanes, repetitive inspections for cracking of the outboard and center sections of the horizontal stabilizer and repair if necessary. For certain other airplanes, this new AD adds a detailed inspection to determine the type of fasteners, related investigative actions, and repair if necessary. This new AD also revises the compliance times for certain inspections and adds alternative inspections for cracking of the upper skin of the center section and rear spar upper chord. This AD results from reports of cracking in the outboard and center section of the aft upper skin of the horizontal stabilizer, the rear spar chord, rear spar web, terminal fittings, and splice plates; and a report of fractured and cracked steel fasteners. We are issuing this AD to detect and correct this cracking, which could lead to reduced structural capability of the outboard and center sections of the horizontal stabilizer and could result in loss of control of the airplane.

DATES: This AD becomes effective June 21, 2006.

On July 15, 2003 (68 FR 38583, June 30, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003.

On April 3, 2002 (67 FR 12464, March 19, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002.

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

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that supersedes AD 2002–06–02, amendment 39–12678 (67 FR 12464, March 19, 2002), and AD 2003–13–09, amendment 39–13209 (68 FR 38583, June 30, 2003). AD 2002–06–02 applies to all Boeing Model 747 airplanes; AD 2003–13–09 applies to certain Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on September 26, 2005 (70 FR 56145). That NPRM proposed to supersede AD 2002–06–02 to continue to require repetitive inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, and repair, if necessary. That NPRM also proposed to supersede AD 2003–13–09 to continue to require repetitive inspections for cracking of the upper skin of the outboard and center sections of the horizontal stabilizer and the rear spar structure, hinge fittings, terminal fittings, and splice plates; and repair if necessary. That NPRM also proposed, for certain airplanes, to add repetitive inspections for cracking of the horizontal stabilizer center and outboard section, and repair if necessary. For certain other airplanes, that NPRM proposed to add a detailed inspection to determine if fasteners are Maraging or H–11 steel fasteners, related investigative actions, and corrective action if necessary. That NPRM also proposed to revise the compliance times for certain inspections and add alternate high frequency eddy current (HFEC) inspections for cracking of the upper skin of the center section and rear spar upper chord.

Comments

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

Request To Clarify Instructions in Paragraph (g)

Boeing asks that paragraph (g) of the NPRM be clarified to direct operators to the applicable section of the Work Instructions in Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003 (referenced in the NPRM as the appropriate source of service information for accomplishing the required actions). We agree with Boeing and have clarified paragraphs (g), (g)(1), and (g)(2) of this AD accordingly.

Request To Change Paragraphs (f)(1) and (f)(2)

Boeing also asks that we change paragraphs (f)(1) and (f)(2) of the NPRM to require accomplishing the inspections in accordance with Part 1 of the Work Instructions of Revision 1 of the alert service bulletin, instead of specifying paragraph (f) of the NPRM. Boeing states that this change will make the inspection methods consistent with the inspection intervals in paragraph (f) and Revision 1 of the alert service bulletin.

We acknowledge Boeing's concern, and we agree that the inspection must be accomplished in accordance with Part 1 of the Work Instructions; however, paragraph (f) of this AD already requires that the inspections be accomplished as of the effective date of this AD in accordance with Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003. Since paragraphs (f)(1) and (f)(2) of this AD require that the repetitive inspections be accomplished per paragraph (f); we have made no change to the AD in this regard.

Request To Change Paragraph (i)

Boeing also asks that we change paragraph (i) of the NPRM to require accomplishing the inspections in accordance with Part 4 of the Work Instructions of Revision 1 of the alert service bulletin. Boeing states that this change will direct operators to the correct paragraph in the service bulletin.

We acknowledge Boeing's concern and we agree that the inspection must be accomplished in accordance with Part 4 of the Work Instructions of Revision 1 of the alert service bulletin. However, paragraph (i) of this AD requires that the inspections be accomplished per paragraph (g)(2) of this AD, which identifies accomplishing the inspections per Part 4 of the Work Instructions of Revision 1 of the alert service bulletin. Therefore, it is not necessary to restate those requirements in paragraph (i). We have made no change to the AD in this regard.

Request To Change Paragraph (k)

In addition, Boeing asks that we change paragraph (k) of the NPRM to add the following: "If any bolt is cracked or fractured, high frequency eddy current (HFEC) inspect the bolt hole and replace the bolt, in accordance with Part 5 of the Work Instructions of Revision 1 of the alert service bulletin." Boeing states that the NPRM contains no instructions for replacing cracked or broken bolts, and reinstallation of those bolts could result in overloaded adjacent bolts.

We do not agree with Boeing that a change is necessary. Paragraph (k) of this AD provides instructions for repetitive inspections for magnetic fasteners that are not cracked or fractured. It would not be appropriate to combine the requirements for bolts that are not cracked or fractured, as specified in paragraph (k), with those for cracked or fractured bolts. Paragraph (j) of this AD provides instructions for inspecting for any cracked or fractured magnetic fastener. Paragraph (j) specifies that "corrective action" must be accomplished by doing all the actions specified in Part 5 of the Work Instructions of Revision 1 of the alert service bulletin. Part 5, Step 1.l., describes procedures for open hole HFEC inspections of the bolt hole, and replacement of the bolt. Therefore, we have made no change to the AD in this regard.

Request To Change Paragraph (n)

Boeing also asks that we change paragraph (n) of the NPRM to allow a grace period for replacing H–11 (magnetic) or Maraging steel bolts. Boeing states that operators accomplishing magnetic and fluorescent particle inspections of H–11 or Maraging steel bolts would be prohibited from re-installing undamaged H–11 or Maraging steel bolts. Boeing adds that paragraph (n) of the NPRM conflicts with paragraph (k) of the NPRM, which allows repeat inspections of H–11 or Maraging steel bolts. Boeing notes that operators accomplishing magnetic and fluorescent particle inspections of H–11 or Maraging steel bolts, or open hole HFEC inspections of Zone B, would be unable to re-install undamaged H–11 or Maraging steel bolts. Operators would be required to install Inconel bolts within 12 months after the effective date of the AD (for Zone B inspections), or within 18 months after the effective date of the AD (for Zone C inspections). H–11 or Maraging steel bolts were originally installed on 460 airplanes that are currently operating, and Boeing is unable to supply 460 bolt kits within a 12 to 18 month period. Boeing adds that there are currently no bolt kits in stock, and only 3 bolt kits scheduled for delivery; therefore, the requirements in paragraph (n) could ground up to 460 airplanes. In addition, operators accomplishing ultrasonic inspections of H–11 or Maraging steel bolts per the Boeing 747 Nondestructive Test Manual D6–7171, Part 4, Chapter 51–00–00, will require bolt standards with identical diameter and grip lengths as the bolts installed on the airplane. These bolt standards are not readily available.

We acknowledge Boeing's concern, and we agree that there would be a hardship on operators if we required replacement of bolts when they were

unable to obtain spare parts. However, we have determined that a shortage of parts is not a concern since this AD does not require removal of H–11 bolts for inspection. The only bolts that this AD requires replacing are those that are found cracked or that an operator elects to replace. Although paragraph (n) of this AD does not allow re-installation of a non-cracked H–11 or Maraging steel bolt, that paragraph does not require removal of the bolt in the first place. Instead, paragraphs (j) and (k) of this AD require inspections of the magnetic bolts in accordance with Part 5 of the Work Instructions of Revision 1 of the alert service bulletin. Step 1.j. of Part 5 provides the option of removing the bolt or leaving the bolt in place and accomplishing an ultrasonic inspection. Therefore, there is no hardship for operators since they may choose to leave the bolt in place and accomplish an ultrasonic inspection. If no cracking is found, operators are allowed to repeat that inspection with the bolt in place as long as no cracking is found during any inspection. Therefore, we have made no change to the AD in this regard.

Request To Change Compliance Time in Paragraph (f)(1)

Boeing also asks that we change paragraph (f)(1) of the NPRM to add a 5,600-flight-hour cap to the compliance time for the initial inspection done after the effective date of the AD. Boeing states that this change will make the inspection methods consistent with the inspection intervals in paragraph (f) and with Revision 1 of the alert service bulletin.

We do not agree with Boeing. We did not add a 5,600-flight-hour cap to the compliance time for the initial inspection so that operators would be allowed to transition to the new interval if they were already accomplishing the repetitive inspections required by AD 2002–06–02. Certain requirements of that AD have been retained in this AD. After the initial inspection, operators will be limited to repeating the inspection within 1,000 flight cycles or 5,600 flight hours, whichever is first, which coincides with Revision 1 of the alert service bulletin. We have made no change to the AD in this regard.

Request To Extend Compliance Time in Paragraph (h)

Northwest Airlines (NWA) asks that we extend the compliance time for the initial inspection, as specified in paragraphs (h)(2)(i)(B) and (h)(2)(ii)(B) of the NPRM, from 12 to 18 months. NWA states that the most significant impact in the NPRM is the requirement to perform the paragraph (g) inspections within the initial inspection threshold specified in paragraphs (h)(2)(i)(B) and (h)(2)(ii)(B). NWA notes that the proposed thresholds differ significantly from those in AD 2003–13–09 (referenced in paragraph (h)(1)(ii) of the NPRM). NWA adds that 6 of its Model 747–200 airplanes may require inspections within 12 months from the effective date of a new adopted rule. NWA states that extending the compliance time to 18 months will allow accomplishment of the inspections during planned heavy maintenance C-check visits.

We do not agree with NWA. The 12-month compliance time in paragraphs (h)(2)(i)(B) and (h)(2)(ii)(B) is in the referenced service bulletin, but was not included in AD 2003–13–09 because it did not meet the criteria necessary to be included in an immediately adopted rule. AD 2003–13–09 included interim action which specified that we were considering a separate rulemaking action to address these inspections at a later date. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the inspections are done. Since maintenance schedules vary among operators, there would be no assurance that the airplane would be inspected during that maximum interval of 18 months. In addition, the 12-month compliance time agrees with the manufacturer's service bulletin referenced in the AD. We have made no change to the AD in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 1,087 Model 747 airplanes worldwide and affects about 227 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The costs for the inspections are per inspection cycle.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Fleet cost
Zone A Detailed Inspection (required by AD 2002–06–02)	8	$65	$520	$118,040.
Zone A NDT Inspection, if done	10	65	650	Unknown.
Zone B NDT Inspection (required by AD 2003–13–09 for Groups 1, 2, and 3 airplanes)	8	65	520	Unknown.
Zone B Open-hole NDT Inspection (new proposed action for Groups 3, 4, and 5 airplanes; and for Groups 1, 2, and 3 airplanes, if done).	30	65	1,950	Unknown.
Zone C Maraging or H–11 Steel Fastener Inspection (new proposed action for Groups 1,2, and 3 airplanes).	8	65	520	Unknown.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12678 (67 FR 12464, March 19, 2002), and amendment 39–13209 (68 FR 38583, June 30, 2003), and by adding the following new airworthiness directive (AD):

2006–10–16 Boeing: Amendment 39–14600. Docket No. FAA–2005–22510; Directorate Identifier 2004–NM–32–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2002–06–02 and AD 2003–13–09.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the outboard and center section of the aft upper skin of the horizontal stabilizer, the rear spar chord, rear spar web, terminal fittings, and splice plates; and a report of fractured and cracked steel fasteners. We are issuing this AD to detect and correct this cracking, which could lead to reduced structural capability of the outboard and center sections of the horizontal stabilizer and could result in loss of control of the airplane.

Compliance

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

Certain Requirements of AD 2002–06–02: To Be Done in Accordance With New Revision of the Service Bulletin

Repetitive Inspections for Zone A

(f) Before the accumulation of 24,000 total flight cycles, or within 90 days after April 3, 2002 (the effective date of AD 2002–06–02), whichever occurs later: Except as provided by paragraph (l) of this AD, "Optional High Frequency Eddy Current (HFEC) Inspections for Zone A," do a detailed inspection for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, in accordance with the Work Instructions and Figure 1 of Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002; or in accordance with Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003. (The inspection procedures include a detailed inspection for cracking of the upper horizontal skin and of the vertical and horizontal flanges of the rear spar upper chord.) As of the effective date of this AD, do the detailed inspection in accordance with Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003. Repeat the detailed inspection thereafter at the times specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

Note 1: For the purposes of this AD, a detailed inspection is "an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids, such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(1) For airplanes on which the detailed inspection required by paragraph (a) of AD 2002–06–02 has been done before the effective date of this AD: Within 1,000 flight cycles after the last detailed inspection, do the detailed inspection specified in paragraph (f) of this AD and repeat the detailed inspection specified in paragraph (f) of this AD thereafter at intervals not to exceed 1,000 flight cycles or 5,600 flight hours, whichever comes first.

(2) For airplanes on which the detailed inspection required by paragraph (a) of AD 2002–06–02 has not been done before the effective date of this AD: After accomplishing the initial inspection, repeat the detailed inspection specified in paragraph (f) of this AD thereafter at intervals not to exceed 1,000 flight cycles or 5,600 flight hours, whichever comes first.

Requirements of AD 2003–13–09, With New Compliance Times Required by This AD

Repetitive Inspections for Zone B: Groups 1 Through 3

(g) For Groups 1, 2, and 3 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: At the time specified in paragraph (h) of this AD, do the Zone B inspections, as required by either paragraph (g)(1) or (g)(2) of this AD, in accordance with Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003, except as provided by paragraph (n) of this AD. Repeat the applicable inspection at the applicable time specified in Sheet 2 of Figure 1 of the service bulletin.

(1) Do nondestructive test (NDT) inspections for cracking of the upper skin of the outboard and center sections of the horizontal stabilizer and the rear spar structure, hinge fittings, terminal fittings, and splice plates, in accordance with Part 3 of the Work Instructions of the service bulletin. The inspections include an ultrasonic inspection of the outboard and center sections, rear spar upper chords under the hinge fitting halves, upper skins under the splice plates, and the rear spar webs behind the terminal fittings; a HFEC inspection of the terminal fitting around the fasteners; a low frequency eddy current inspection of the splice plates around the fasteners; a surface HFEC inspection of the rear spar upper chords in the radius area above the terminal fitting and the lower surface of the horizontal flange; and an HFEC inspection of the rear spar webs in the exposed area above the terminal fitting.

(2) In lieu of the inspections specified in paragraph (g)(1) of this AD: Do an alternate open hole HFEC inspection for cracking of the splice plates, terminal fittings, hinge fitting halves, rear spar upper chords, rear spar webs, and upper skins; and replace H–11 bolts with Inconel bolts; in accordance with Part 4 of the Work Instructions of the service bulletin, except as provided by paragraph (n) of this AD.

(h) For Groups 1, 2, and 3 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: Do the inspections required by paragraph (g) of this AD at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Before the accumulation of 27,000 total flight cycles or 117,000 total flight hours, whichever is first.

(ii) Within 90 days after July 15, 2003 (the effective date of AD 2003–13–09).

(2) At the applicable times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) For Groups 1 and 3 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: At the latest of the times specified in paragraphs (h)(2)(i)(A) and (h)(2)(i)(B) of this AD.

(A) Before the accumulation of 20,000 total flight cycles or 85,000 total flight hours, whichever is first.

(B) Within 12 months after the effective date of this AD.

(ii) For Group 2 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: At the latest of the times specified in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this AD.

(A) Before the accumulation of 22,000 total flight cycles or 95,000 total flight hours, whichever is first.

(B) Within 12 months after the effective date of this AD.

Additional Requirements of This AD

Repetitive Inspections for Zone B: Groups 4 Through 6

(i) For Groups 4, 5, and 6 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, do the Zone B inspections as specified in paragraph (g)(2) of this AD. Repeat the applicable inspection at the applicable time specified in Sheet 3 of Figure 1 of the service bulletin.

(1) Before the accumulation of 20,000 total flight cycles or 85,000 total flight hours, whichever is first.

(2) Within 12 months after the effective date of this AD.

Repetitive Inspections for Zone C: Groups 1 Through 3

(j) For Groups 1, 2, and 3 airplanes identified in paragraph 1.A. Effectivity of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003: Within 18 months after the effective date of this AD, do a detailed inspection to determine if fasteners common to the horizontal stabilizer outboard and center section upper chords at the hinge fitting halves and the splice plates are magnetic, related investigative actions (includes ultrasonic, magnetic particle, or fluorescent particle inspections for any cracked or fractured Maraging or H–11 steel fastener), and corrective actions by accomplishing all the actions specified in Part 5 of the Work Instructions of the service bulletin, except as provided by paragraph (n) of this AD.

(k) If, during the actions required by paragraph (j) of this AD, any fastener is found to be magnetic and is not cracked or fractured, repeat the related investigative actions and corrective actions specified in paragraph (j) of this AD at the time specified in Sheet 4 of Figure 1 of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003.

Optional High Frequency Eddy Current (HFEC) Inspections for Zone A

(l) In lieu of the detailed inspection specified in paragraph (f) of this AD: Do an HFEC inspection for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, in accordance with Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003. Repeat the HFEC inspection thereafter at intervals not to exceed 2,700 flight cycles or 15,000 flight hours, whichever comes first.

Repair

(m) If any discrepancy (cracking or damage) is found during any inspection or related investigative action required by paragraphs (f), (g), (i), or (l) of this AD: Before further flight, repair in accordance with the Work Instructions of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003, except as provided by paragraph (n) of this AD. Where the service bulletin specifies to contact the manufacturer for appropriate action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Parts Installation

(n) As of the effective date of this AD, no person may install any Maraging or H–11 steel fasteners in the locations specified in this AD. Where Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003, specifies to install H–11 bolts (kept fasteners), this AD requires installation of Inconel bolts.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) AMOCs, approved previously per AD 2002–06–02 or AD 2003–13–09, are approved as AMOCs for the corresponding provisions of this AD, for the repaired area only.

Material Incorporated by Reference

(p) You must use Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002; or Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On July 15, 2003 (68 FR 38583, June 30, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003.

(2) On April 3, 2002 (67 FR 12464, March 19, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002.

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

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4541 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AG08

Civil Monetary Penalties, Assessments and Recommended Exclusions

AGENCY: Office of the Inspector General (OIG), Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules reflect provisions of Public Law 106–169, the Foster Care Independence Act of 1999, and Public Law 108–203, the Social Security Protection Act of 2004, to provide new and amended procedures for SSA's civil monetary penalty cases filed pursuant to sections 1129 and 1140 of the Social Security Act .

These final rules implement amendments to section 1129 of the Social Security Act (42 U.S.C. 1320a–8) to provide for the imposition of civil monetary penalties and/or assessments: against representative payees who convert Social Security benefits for a use other than for the use or benefit of the beneficiary; against those who withhold disclosure of material statements to SSA; and, against those who make false or misleading statements or representations or omissions of a material fact with respect to benefits or payments under title VIII of the Social Security Act.

These final rules also implement amendments to section 1140 of the Social Security Act (42 U.S.C. 1320b–10) to: Add to the list of enumerated terms that may give rise to a violation of section 1140; and, provide for the imposition of civil monetary penalties against those who charge fees for products or services, otherwise provided free of charge by SSA, unless the offers provide sufficient notice that the product or service can be obtained free of charge from SSA.

DATES: These final rules are effective June 16, 2006, except that § 498.102(d) will be effective December 16, 2006.

Applicability Date: Section 498.102(a)(3), as it relates to the withholding of information from, or failure to disclose information to, SSA, will be applicable upon implementation of the centralized computer file described in section 202 of Public Law 108–203. If you want information regarding the applicability date of this provision, call or write the SSA contact person. SSA will publish a document announcing the applicability date in a subsequent **Federal Register** document. The remainder of § 498.102(a)(3), currently in effect, is unaffected by this delay.

FOR FURTHER INFORMATION CONTACT: Kathy A. Buller, Chief Counsel to the Inspector General, Social Security Administration, Office of the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2827 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at *www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

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

Background

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 23, 2005 (70 FR 14603), that proposed to amend the civil monetary penalty (CMP) and assessment procedures in order to implement and reflect changes made to sections 1129 and 1140 of the Social Security Act (42 U.S.C. 1320a–8 and 1320b–10) by the Foster Care Independence Act of 1999, Public Law 106–169, and the Social Security Protection Act of 2004, Public Law 108–203.

Changes Required by Public Law 106–169

Section 251(a) of Public Law 106–169, the Foster Care Independence Act of 1999, enacted December 14, 1999, added title VIII, Special Benefits for Certain World War II Veterans, to the Social Security Act. Title VIII provides that individuals who qualify under section 802 of the Social Security Act (42 U.S.C. 1002) will be entitled to a monthly benefit paid by SSA for each month after September 2000 (or an earlier date if determined by SSA) the individual resides outside the United States. Section 251(b)(6) of Public Law 106–169 amended section 1129 to include reference to title VIII. This change will subject an individual to the possible imposition of a civil monetary penalty and/or assessment for making false or misleading statements or representations or omissions of a material fact with respect to benefits or payments under title VIII.

Changes Required by Public Law 108–203

Sections 111, 201(a)(1), 204, and 207 of Public Law 108–203, the Social Security Protection Act of 2004, enacted March 2, 2004, amended sections 1129 and 1140 of the Social Security Act (42 U.S.C. 1320a–8 and 1320b–10). These changes expand and enhance our enforcement authority for violations of sections 1129 and 1140 of the Social Security Act, as set out in more detail in the preceeding *Summary* section. These additional enforcement authorities will better protect SSA's programs and operations from waste, fraud and abuse, as well as protect citizens, many elderly, who may be misled by solicitations/advertisements to believe that SSA has endorsed or authorized the solicitation/advertisement.

Civil Monetary Penalties and Assessments for False Statements, Conversions, and Withholding

The two amendments to section 1129 broaden the scope of the civil monetary penalty program by adding new categories for civil monetary penalties and/or assessments (1) against representative payees with respect to conversions and (2) against individuals who withhold the disclosure of material facts to SSA.

The first amendment to section 1129 extends the civil monetary penalty and assessment provisions to representative payees of individuals entitled to benefits. The final rule implements this amendment by subjecting representative payees who convert a payment, or any part thereof, made under title II, title VIII or title XVI of the Social Security Act, intended for a Social Security beneficiary to a use other than for the use and benefit of the beneficiary to a civil monetary penalty of up to $5,000 and/or an assessment in lieu of damages for each such conversion. Our final rule applies to any person (including any organization, agency, or other entity) who receives benefits on behalf of another individual for the purpose of distributing the benefits with the beneficiary's best interests in mind. Previously, representative payees could elude civil monetary penalties and/or assessments under section 1129 for such actions, as section 1129 did not extend to representative payees who converted lawfully issued payments intended for a beneficiary unless the representative payee had either made false or misleading statements or representations or omitted from a statement a material fact regarding a beneficiary's initial or continuing right to, or the amount of, monthly Social Security benefits or payments. In addition, the representative payee must have known or should have known that the statements or representations or omissions of material facts were false or misleading.

The second amendment under section 1129 extends the civil monetary penalty and/or assessment provisions to individuals who withhold from SSA disclosure of material facts that are used in determining an individual's initial or continuing eligibility for, or amount of, benefits or payments under title II, title VIII or title XVI of the Social Security Act.

Our final rule implements this amendment by providing for civil monetary penalties and/or assessments in lieu of damages to be imposed for the failure to come forward and notify SSA of changed circumstances that affect eligibility or benefit amounts when the individual knew or should have known that the withheld fact was material and that the failure to come forward was misleading.

This amendment extends the coverage of section 1129. Previously, under section 1129, the OIG was able to impose a civil monetary penalty and/or assessment only against individuals who either made false or misleading statements or representations or omitted from a statement a material fact regarding an individual's initial or continuing right to, or the amount of, monthly Social Security benefits or payments. In addition, the individual must have known or should have known that the statements or

representations or omissions of material facts were false or misleading.

Therefore, a civil monetary penalty and/or assessment could not be imposed against an individual who should have known to come forward and notify the SSA of changed circumstances that affected that individual's or another individual's eligibility or benefit amount but failed to do so. The amendment addresses this issue. As stated at page 14 in Senate Report 108–176, accompanying Public Law 108–203, this amendment is intended to cover situations that "include (but are not limited to) the following: (1) An individual who has a joint bank account with a beneficiary in which the SSA direct deposited the beneficiary's Social Security checks; upon the death of the beneficiary, this individual fails to disclose the death of the beneficiary to SSA, instead spending the proceeds from the deceased beneficiary's Social Security checks; and (2) an individual who is receiving benefits under one SSN while working under another SSN."

This final rule allows the OIG to impose a penalty of up to $5,000 and/or an assessment in lieu of damages for each individual payment of Social Security benefits received while withholding disclosure of such material fact from the SSA.

Senate Committee Report 108–176 also states in its analysis of the amendment, at pages 13–14, that this amendment is not intended to apply against individuals whose failure to come forward was not for the purpose of improperly obtaining or continuing to receive benefits.

This amendment is effective only for violations occurring after the date on which the Commissioner implements the centralized computer file described in section 202 of Public Law 108–203 to record the date of submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status. SSA will announce when it has implemented the centralized computer file in a subsequent **Federal Register** notice.

This amendment strengthens the deterrence factor of section 1129 by enabling the OIG to pursue civil monetary penalties and/or assessments against individuals who withhold disclosure of material facts in order to receive benefits to which they are not entitled. The OIG will continue to impose reasonable civil monetary penalties and assessments, as applicable, on a case-by-case basis by applying the five enumerated factors employed in other section 1129 cases, as set out at 20 CFR 498.106(a).

Civil Monetary Penalties and Assessments for Misuse of SSA's Words or Emblems

Section 1140 prohibits individuals and groups from using in a solicitation, advertisement or other communication specific terms related to Social Security that could be interpreted or construed as conveying the impression either that the item is approved, endorsed, or authorized by SSA or that such person has some connection with, or authorization from, SSA. Section 1140 is aimed at protecting consumers, especially senior citizens who rely on SSA and are some of our most vulnerable stakeholders, from being victimized by misleading solicitors or direct marketers who improperly use Social Security symbols or emblems in order to suggest they have some connection with, or authorization from, SSA.

The first amendment to section 1140 authorizes the Commissioner to impose a civil monetary penalty against certain individuals or groups who offer to assist an individual in obtaining products or services for a fee that SSA provides free of charge. If the individual or group charges a fee for such product or service, the solicitation/mailing for the product or service must include a written notice stating that the product or service is available from SSA free of charge. Section 204 of Public Law 108–203 authorizes the Commissioner to set the standards for the notice with respect to content, placement and legibility. Pursuant to this authority, our final rule requires clear and prominent display of the notice. By drawing the attention of the reader, the notice would help protect consumers. The goal of this regulation is to prevent advertisements or other communication that embed such notices within other text or place the notice in small type face in an attempt to hide the fact that the products or services are available from SSA free of charge.

Consistent with the amendment, our final rule provides exceptions for persons serving as a claimant representative in connection with a claim arising under title II, title VIII or title XVI of the Social Security Act and for persons assisting individuals in a plan with the goal of supporting themselves without Social Security disability benefits. As specified in section 204(b) of the SSPA, this rule applies to offers of assistance made six months after these final regulations are issued.

The second amendment to section 1140 adds certain words and phrases to the statute and prohibits the use of these words and phrases, or any combination or variation of such words, in a misleading manner. Specifically, the amendment expands section 1140 to include: "Death Benefits Update," "Federal Benefit Information," "Funeral Expenses," and "Final Supplemental Program." These words and phrases have been used by solicitors/marketers to give the false impression that their solicitations/mailings or other items are connected to or authorized by the SSA or that the solicitors/marketers have some connection with, or authorization from, SSA.

We have made some non-substantive, technical changes to the Notice of Proposed Rulemaking (NPRM) including:

(1) Section 498.100 (b)(1) was modified to state, "Make or cause to be made false statements or representations or omissions or otherwise withhold disclosure of a material fact for use in determining any right to or amount of benefits under title II or benefits or payments under title VIII or title XVI of the Social Security Act; * * *" We believe that the addition of "or otherwise withhold the disclosure of a material fact" to section (b)(1) accurately reflects the amendment to section 1129 of the Social Security Act made by section 201 of Public Law 108–203. The phrase "otherwise withhold disclosure" is defined in § 498.101.

(2) Section 498.100(b)(2) was modified to state, "Convert any payment, or any part of a payment, received under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, while acting in the capacity of a representative payee for that individual, to a use that such person knew or should have known was other than for the use and benefit of such other individual; or * * *." We believe that this more accurately tracks the amendment to section 1129 by section 111 of Public Law 108–203 and clarifies that a civil monetary penalty and/or assessment, may be imposed if the payment, or any part of the payment, in question was made to the representative payee for the use and benefit of another person. We changed the word "beneficiary" at the end of the section to "such other individual" as this change more accurately track the language of the legislation.

(3) Section 498.100(b)(3) was previously section (b)(2) but was renumbered due to the amendments to sections 1129 and 1140. In addition, because we added a new section (b)(4), the word "or" was added to the end of § 498.100(b)(3).

(4) Section 498.100(b)(4) was added to state, "With limited exceptions, charges a fee for a product or service that is available from SSA free of charge without including a written notice stating the product or service is available from SSA free of charge." We believe that separating section § 498.100(b)(3) as it appeared in the NPRM into sections (b)(3) and (b)(4) more clearly and accurately reflects the amendment to section 1140 by section 204 of Public Law 108–203 to address anyone who charges a fee for a product or service that is available from SSA free of charge without including a written notice so stating.

(5) Section 498.101, we deleted the phrase "title XVI" and inserted the phrase "title VIII or title XVI" in the definition of "material fact." The definition now reads, "*Material fact* means a fact which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or eligible for benefits or payments under title VIII or title XVI of the Social Security Act." We made this change to be consistent with other sections of the regulations wherein both title VIII and title XVI are mentioned together.

(6) Section 498.102(a)(1)(ii), we inserted the word "title" before "XVI" to be consistent with the other sections of the regulations wherein title VIII and title XVI are mentioned together.

(7) Section 498.102(c), we changed the word "whom" to "who" to be grammatically correct. We also deleted the phrase "an advertisement or other item" and inserted the phrase "a solicitation, advertisement, or other communication" before the phrase "was authorized, approved, or endorsed * * *"

(8) Section 498.102(d), we deleted the phrase "products or services" after the word "obtaining" and inserted the phrase "a product or service" in order to be consistent with the use of the terms "product or service" in the remainder of subsection (d). We also deleted the word "that" before the phrase "the Social Security Administration * * *"

(9) Section 498.102(d)(1), we moved the phrase "before the product or service is provided to the individual" from the end of the sentence to after the phrase "sufficient notice." The sentence now reads, "the person provides sufficient notice before the product or service is provided to the individual that the product or service is available free of charge and:'

(10) Section 498.102(d)(1)(i), we deleted the phrase "in printed solicitations or advertisements," and inserted the phrase "in a printed solicitation, advertisement or other communication." We believe this is consistent with similar language in § 498.102(c).

(11) Section 498.102(d)(1)(ii), we deleted "must be" after the phrase "such notice" and inserted "is" after the phrase "such notice." This parallels current section (i) that precedes this section.

(12) Section 498.102(d)(2), we deleted the introductory phrase "Paragraph (d) of this section shall not apply to offers—" and inserted the phrase, "Civil monetary penalties will not be imposed under paragraph (d) of this section with respect to offers—* * *" We believe this modification parallels the language in 498.102(c)(2).

(13) Section 498.102(d)(2)(i), we inserted the word "title" before "VIII" and before "XVI" to be consistent with the other sections of the regulations wherein title II, title VIII and title XVI are mentioned together.

(14) Section 498.103(b), we deleted the word "wrongfully" and inserted the phrase "or any part thereof" after the phrase "converts such payment." We believe this accurately reflects the amendment to section 1129 by section 111 of Public Law 108–203 and is parallel to § 498.102(b). The section now reads, "Under § 498.102(b), the Office of the Inspector General may impose a penalty of not more than $5,000 against a representative payee for each time the representative payee receives a payment under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, and who converts such payment, or any part there of, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual."

(15) Section 498.103(c), we separated the section included in the NPRM into two sections, (c) and (d). We renumbered previous § 498.103(d) as (e). We believe that this clarifies the sections and is now parallel to § 498.100(b), which states the purpose of the regulations. Section 498.103(c) now reads, "Under § 498.102(c), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Social Security Administration program, words, letters, symbols, or emblems relating to printed media and a penalty of not more than $25,000 for each violation in the case that such misuse related to a broadcast or telecast." Section 498.103(d) now reads, "Under § 498.102(d), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from insufficient notice relating to printed media regarding products or services provided free of charge by the Social Security Administration and a penalty of not more than $25,000 for each violation in the case that such insufficient notice relates to a broadcast or telecast." We have also deleted the word "in" before "printed media," in § 498.103(d) and inserted the phrase "relating to" before "printed media." This parallels § 498.103(c).

(16) Section 498.103(e) (1), we deleted the word "or" between "solicitation" and "advertisement" and inserted the phrase "or other communication" after advertisement. This parallels the use of this phrase in § 498.102.(c) and § 498.102(d)(1)(i). Also, in § 498.103(e) (1) and (2), we inserted "or (d)" after the phrase "§ 498.102(c)." We made this change to accurately reflect the amendment to section 1140 by section 204 of the SSPA to address anyone who charges a fee for a product or service that is available from SSA free of charge without including a written notice so stating.

(17) Section 498.104, we separated the first sentence of the NPRM into two sentences. We believe the revised language states more clearly the instances when an assessment may be imposed more closely tracks the language of the legislation. Now the section reads: "A person subject to a penalty determined under § 498.102(a) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid under title II, title VIII or title XVI of the Social Security Act as a result of the statement, representation, omission, or withheld disclosure of a material fact which was the basis for the penalty. A representative payee subject to a penalty determined under § 498.102(b) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments received by the representative payee for the use and benefit of another individual and converted to a use other than for the use and benefit of such other individual. An assessment is in lieu of damages sustained by the United States because of such statement, representation, omission, withheld disclosure of a material fact, or conversion, as referred to in §§ 498.102(a) and (b)." In the sentence regarding representative payee, we also deleted the word "person" and inserted "individual" in its place, inserted the phrase "use and" before the word "benefit" and deleted the word "the" before "individual" and inserted the phrase "such other" in its place. We

believe this more closely tracks the language of the legislation.

(18) Section 498.106(b), we deleted "§ 498.103(c)," and inserted "§§ 498.103(c) and (d),". This is consistent with and parallels the modifications we made to section § 498.103(c) from the NPRM wherein we separated § 498.103(c) into subsections (c) and (d).

(19) Section 498.109(a)(2), we deleted the word "or" before "other actions." We believe the deletion of these terms more clearly expresses the intent of the legislation.

(20) Section 498.128(c)(1), we added an "s" to "Violation" to make the term grammatically correct. We also deleted "and" in the phrase "under §§ 498.102(c) and (d)" and inserted "under §§ 498.102(c) or (d)." We believe this modification addresses potential confusion arising from the section as previously written regarding the scope of the section and reflects the intent of the SSPA to provide authority to the Commissioner to compromise and collect a penalty imposed under either §§ 498.102(c) or (d).

Public Comments

The 60-day public comment period closed on May 23, 2005. We received comments on the NPRM from 2 organizations, the National Organization of Social Security Claimants' Representatives (NOSSCR) and the Disability Law Center, Inc. Both commenters raised similar concerns that the regulations were overly broad and that there were unaddressed problems which would increase the likelihood of an overbroad application of these rules to claimants and their representatives. For the reasons discussed below, the public comments we received in response to the NPRM have not led us to make substantive, non-technical changes in these final rules.

Comment: The commenters raised concerns that the proposed regulations were overbroad in defining when a person may be subject to a civil monetary penalty and assessment, as applicable, for withholding the disclosure of a fact which the person knows or should know is material to the determination of any initial or continuing right to Social Security benefits if the person knows or should know, that the withholding of the disclosure is misleading. The commenters are concerned that this proposed rule could conflict with State Bar rules regarding the attorney's duty of confidentiality to the client and not to act in a way that is adverse to the client's interest, presenting a dilemma for attorney representatives. The commenters recommended that we eliminate to the extent possible the potential for such conflicts.

Response: We understand the commenters' concern of placing attorney representatives in the potential position of risking sanctions for violating State Bar rules or facing the imposition of a civil monetary penalty and/or assessment under these rules. However, after careful review of the commenters' comments, we do not believe further modification of the rules is warranted.

As acknowledged in NOSSCR's comments, representatives of claimants before SSA operate under a "Prohibited Action" in SSA's Standards of Conduct not to "* * * knowingly make or present, or participate in the making or representation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction * * *." See 20 CFR 404.1740(c)(3) and 416.1540(c)(3). Furthermore, while attorney representatives are also bound by State codes of professional conduct that mandate affirmative duties, such as the duties to maintain client confidentiality and provide zealous representation, those rules are not intended to enable an attorney to violate the law.

One of the commenters referred to SSA's final rules issued in 1998 governing the conduct of all claimants' representatives, both attorneys and non-attorneys, who appear before SSA. At that time, SSA received public comments questioning SSA's authority to issue such regulations because standards regulating the conduct of attorneys were already set out in State laws. In its response, SSA noted that in *Sperry* v. *State of Florida*, 373 U.S. 379 (1963), a case involving State bar membership rules, the Supreme Court held that the Federal government had pre-emptive powers over States' legislative and judicial authorities when acting under valid Federal regulations. Accordingly, SSA disagreed with the contention that it lacked authority to issue the regulations and stated that its regulations "would supersede any inconsistent State or local rules." See 63 Fed. Reg. 41404, 41408 (August 4, 1998). We believe that SSA's 1998 response addresses the comments regarding the current rules.

Further, in 2000, the Department of Justice, Immigration and Naturalization Service (INS), promulgated a final rule to amend "the rules and procedures concerning professional conduct for attorneys and representatives (practitioners) who appear before the Executive Office for Immigration Review (EOIR) and/or the Immigration and Naturalization Service (the Service)." See 65 FR 39513–39534 (June 27, 2000). Several commenters on the INS notice of proposed rulemaking indicated that it was "inappropriate for Federal agencies to unilaterally impose a national disciplinary scheme where states should have sole jurisdiction and, further that Federal regulations concerning discipline [would] cause confusion and uncertainty with regard to State rules. Others objected that the rule subject[ed] practitioners to being disciplined twice for the same conduct—once by the Federal government and once by the State bar. Others believed that this rule [was] an unnecessary and impermissible intrusion into the state law licensure process and 'to bar a lawyer from practice before an agency [was] unheard of.'"

In its response, the INS cited to the 1998 SSA regulations discussed above and the case of *Sperry* v. *State of Florida*, 373 U.S. 379 (1963), to support the promulgation of its rules. In part, INS stated as follows:

> For the reasons explained in SSA's supplementary information to their disciplinary rule, EOIR and the Service should not be expected or required to apply numerous local rules, or local interpretations of the rules, to problems that require national uniformity. Applying local rules or local interpretations in lieu of a national standard would leave immigration attorneys in one State subject to discipline, while possibly exempting immigration attorneys in another State.

65 FR 39513, 39524 (June 27, 2000).

INS further stated, "[s]imilar to the SSA program, practice before EOIR and the Service is not limited to attorneys, but includes non-attorneys who may not be subject to State bar rules. EOIR and the Service believe that all practitioners, attorneys and non-attorneys alike, must be held to uniform standards of professional conduct in immigration proceedings * * *." *Id.* We believe the INS's response to these comments also applies to the comments to our rule.

We would also note that section 1129 provides that a civil monetary penalty and assessment, as applicable, may be imposed against "any person (including an organization, agency, or other entity) * * *" "Person" is defined in section 1101(a)(3) of the Social Security Act (42 U.S.C. 1301(a)(3)) as "an individual, a trust or estate, a partnership, or a corporation." The Social Security Act does not exempt attorneys from this definition.

As discussed above, State bar rules differ in specific language and format among the 50 States, the District of

Columbia, and Puerto Rico. The intent of these regulations is to provide uniform guidance. We do not believe these rules will unduly burden the attorney representative by placing him/her in the position of either risking sanctions under the appropriate State Bar or facing the imposition of a civil monetary penalty and assessment in lieu of damages. As is stated in Rule 1.2(d) of the American Bar Association's Model Rules of Professional Conduct,

> A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Moreover, Rule 3.3 of the American Bar Association's Model Rules of Professional Conduct provides that a lawyer must be candid toward the tribunal. Rule 3.3(a)(1) states that "a lawyer shall not knowingly * * * make a false statement of fact of law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer * * *."

In determining whether to impose a civil monetary penalty and/or assessment and, if so, the amount, the OIG will take into account the five factors listed in 20 CFR 498.106(a), which include the degree of culpability of the person committing the offense and such other matters as justice may require. In making this determination, the OIG may consider, to the extent relevant, actions taken by an attorney representative pursuant to a State Bar code of professional conduct.

Comment: The commenters also raised concerns that the proposed regulations were overbroad and would harm claimants whose failure to notify SSA of information was not done for the purpose of improperly obtaining benefits but resulted simply from not understanding the rules. In this vein, one commenter stated that we should provide guidance for determining whether the person "knew or should have known," because knowledge is a critical factor for determining whether there is a basis for imposing a civil monetary penalty. See proposed rule § 498.102(a)(2) and (3). It was suggested that we include a provision that requires consideration of physical or mental limitation and educational or linguistic limitation, including lack of facility with the English language.

Response: We agree that whether the person "knew or should have known" is a critical factor in determining whether there is a basis for imposing a civil monetary penalty. Senate Committee Report 108–176, accompanying Public Law 108–203, states in its analysis of this amendment, at pages 13–14, that this amendment is not intended to apply against individuals whose failure to come forward was not for the purpose of improperly obtaining or continuing to receive benefits.

In determining whether to impose a civil monetary penalty and/or assessment in lieu of damages and if so, the amount, of any civil monetary penalty and assessment, the OIG will take into account the following five factors: (1) The nature of the statements and representations and the circumstances under which they occurred; (2) the degree of culpability; (3) the history of prior offenses; (4) the financial condition of the person who committed the offense; and (5) such other matters as justice may require. See 20 CFR 498.106(a). These factors would include consideration of any information suggesting that the person's failure to disclose information was not done for the purpose of improperly obtaining benefits, such as any physical or mental limitations and educational or linguistic limitations, including lack of facility with the English language. We believe this addresses the concerns of the commenters and is consistent with the analysis of the amendment in the Senate Committee Report 108–176. Therefore, we believe the regulations are not overbroad and that additional guidance is not necessary.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

We have determined that no regulatory impact analysis is required for these regulations. While the penalties and assessments which the OIG could impose as a result of the amendments to sections 1129 and 1140 of the Act might have a slight impact on small entities, we do not anticipate that a substantial number of small entities will be significantly affected by these rules. Based on our determination, the Inspector General certifies that these final regulations will not have a significant impact on a substantial number of small business entities. These final rules reflect legislative amendments to previously existing sections 1129 and 1140 of the Act and do not substantially alter the effect of these sections on small business entities. Therefore we have not prepared a regulatory flexibility analysis.

Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance, 96.002 Social Security-Retirement Insurance, 96.003 Social Security-Survivors Insurance, 96.006 Supplemental Security Income, 96.020 Special Benefits for Certain World War II Veterans)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud, Penalties.

Dated: May 10, 2006.

Patrick P. O'Carroll, Jr.,

Inspector General, Social Security Administration.

■ For the reasons set out in the preamble, we are amending part 498 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

■ 1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 702(a)(5), 1129 and 1140 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8 and 1320b–10).

■ 2. Section 498.100 is amended by revising paragraph (b)(1); by redesignating paragraph (b)(2) as paragraph (b)(3) and adding "; or" at the end of newly-designated paragraph (b)(3); and by adding new paragraphs (b)(2) and (b)(4) to read as follows:

§ 498.100 Basis and purpose.

* * * * *

(b) * * *

(1) Make or cause to be made false statements or representations or omissions or otherwise withhold disclosure of a material fact for use in determining any right to or amount of benefits under title II or benefits or payments under title VIII or title XVI of the Social Security Act;

(2) Convert any payment, or any part of a payment, received under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, while acting in the capacity of a representative payee for that individual, to a use that such person knew or should have known was

other than for the use and benefit of such other individual; or

* * * * *

(4) With limited exceptions, charge a fee for a product or service that is available from SSA free of charge without including a written notice stating the product or service is available from SSA free of charge.

■ 3. Section 498.101 is amended by revising the definition of "Material fact" and adding the new definition for "Otherwise withhold disclosure" in alphabetical order to read as follows:

§ 498.101 Definitions.

* * * * *

Material fact means a fact which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or eligible for benefits or payments under title VIII or title XVI of the Social Security Act.

Otherwise withhold disclosure means the failure to come forward to notify the SSA of a material fact when such person knew or should have known that the withheld fact was material and that such withholding was misleading for purposes of determining eligibility or Social Security benefit amount for that person or another person.

* * * * *

■ 4. Section 498.102 is revised to read as follows:

§ 498.102 Basis for civil monetary penalties and assessments.

(a) The Office of the Inspector General may impose a penalty and assessment, as applicable, against any person who it determines in accordance with this part—

(1) Has made, or caused to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or amount of:

(i) Monthly insurance benefits under title II of the Social Security Act; or

(ii) Benefits or payments under title VIII or title XVI of the Social Security Act; and

(2)(i) Knew, or should have known, that the statement or representation was false or misleading, or

(ii) Made such statement with knowing disregard for the truth; or

(3) Omitted from a statement or representation, or otherwise withheld disclosure of, a material fact for use in determining any initial or continuing right to or amount of benefits or payments, which the person knew or should have known was material for such use and that such omission or withholding was false or misleading.

(b) The Office of the Inspector General may impose a penalty and assessment, as applicable, against any representative payee who receives a payment under title II, title VIII, or title XVI for the use and benefit of another individual and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.

(c) The Office of the Inspector General may impose a penalty against any person who it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that the person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that a solicitation, advertisement or other communication was authorized, approved, or endorsed by the Social Security Administration, or that such person had some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in paragraph (c) of this section, of—

(i) The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Supplemental Security Income Program," "Death Benefits Update," "Federal Benefit Information," "Funeral Expenses," "Final Supplemental Program," or any combination or variation of such words; or

(ii) The letters "SSA," or "SSI," or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration) or any other combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any words, letters, symbols or emblems of the Social Security Administration or instrumentality of the State or political subdivision.

(d) The Office of the Inspector General may impose a penalty against any person who offers, for a fee, to assist an individual in obtaining a product or service that the person knew or should have known the Social Security Administration provides free of charge, unless:

(1) The person provides sufficient notice before the product or service is provided to the individual that the product or service is available free of charge and:

(i) In a printed solicitation, advertisement or other communication, such notice is clearly and prominently placed and written in a font that is distinguishable from the rest of the text;

(ii) In a broadcast or telecast such notice is clearly communicated so as not to be construed as misleading or deceptive.

(2) Civil monetary penalties will not be imposed under paragraph (d) of this section with respect to offers—

(i) To serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

(ii) To prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.

(e) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

■ 5. Section 498.103 is revised to read as follows:

§ 498.103 Amount of penalty.

(a) Under § 498.102(a), the Office of the Inspector General may impose a penalty of not more than $5,000 for each false statement or representation, omission, or receipt of payment or benefit while withholding disclosure of a material fact.

(b) Under § 498.102(b), the Office of the Inspector General may impose a penalty of not more than $5,000 against a representative payee for each time the representative payee receives a payment under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.

(c) Under § 498.102(c), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Social Security Administration program words, letters, symbols, or emblems relating to printed media and a penalty of not more than $25,000 for each violation in the case that such misuse related to a broadcast or telecast.

(d) Under § 498.102(d), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from insufficient notice relating to printed media regarding products or services provided free of charge by the Social Security Administration and a penalty of not more than $25,000 for each violation in the case that such insufficient notice relates to a broadcast or telecast.

(e) For purposes of paragraphs (c) and (d) of this section, a violation is defined as—

(1) In the case of a mailed solicitation, advertisement, or other communication, each separate piece of mail which contains one or more program words, letters, symbols, or emblems or insufficient notice related to a determination under § 498.102(c) or (d); and

(2) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 498.102(c) or (d).

■ 6. Section 498.104 is revised to read as follows:

§ 498.104 Amount of assessment.

A person subject to a penalty determined under § 498.102(a) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid under title II, title VIII or title XVI of the Social Security Act as a result of the statement, representation, omission, or withheld disclosure of a material fact which was the basis for the penalty. A representative payee subject to a penalty determined under § 498.102(b) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments received by the representative payee for the use and benefit of another individual and converted to a use other than for the use and benefit of such other individual. An assessment is in lieu of damages sustained by the United States because of such statement, representation, omission, withheld disclosure of a material fact, or conversion, as referred to in § 498.102(a) and (b).

■ 7. Section 498.106 is amended by revising paragraphs (a) introductory text, (a)(1), and (b) introductory text to read as follows:

§ 498.106 Determinations regarding the amount or scope of penalties and assessments.

(a) In determining the amount or scope of any penalty and assessment, as applicable, in accordance with § 498.103(a) and (b) and 498.104, the Office of the Inspector General will take into account:

(1) The nature of the statements, representations, or actions referred to in § 498.102(a) and (b) and the circumstances under which they occurred;

* * * * *

(b) In determining the amount of any penalty in accordance with § 498.103(c) and (d), the Office of the Inspector General will take into account—

* * * * *

■ 8. Section 498.109 is amended by revising paragraph (a)(2) to read as follows:

§ 498.109 Notice of proposed determination.

(a) * * *

(2) A description of the false statements, representations, other actions (as described in § 498.102(a) and (b)), and incidents, as applicable, with respect to which the penalty and assessment, as applicable, are proposed;

* * * * *

■ 9. Section 498.114 is amended by revising paragraph (a) to read as follows:

§ 498.114 Collateral estoppel.

* * * * *

(a) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or *nolo contendere*) of a Federal or State crime; and

* * * * *

■ 10. Section 498.128 is amended by revising paragraphs (b), (c)(1), and (d)(1) to read as follows:

§ 498.128 Collection of penalty and assessment.

* * * * *

(b) In cases brought under section 1129 of the Social Security Act, a penalty and assessment, as applicable, imposed under this part may be compromised by the Commissioner or his or her designee and may be recovered in a civil action brought in the United States District Court for the district where the violation occurred or where the respondent resides.

(c) * * *

(1) Violations referred to in § 498.102(c) or (d) occurred; or

* * * * *

(d) * * *

(1) Monthly title II, title VIII, or title XVI payments, notwithstanding section 207 of the Social Security Act as made applicable to title XVI by section 1631(d)(1) of the Social Security Act;

* * * * *

[FR Doc. 06–4594 Filed 5–16–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 7, and 18

RIN 1219–AB42

Evaluation of International Electrotechnical Commission's Standards for Explosion-Proof Enclosures

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; equivalency determination.

SUMMARY: MSHA reviewed the requirements of the International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas Atmospheres to determine if they are equivalent to the Agency's applicable product approval requirements or can be modified to provide at least the same degree of protection as those requirements. MSHA has determined that the IEC's standards for explosion-proof enclosures, with modifications, provide the same degree of protection as MSHA's applicable product approval requirements. Applicants may request that MSHA grant product approval for explosion-proof (flameproof) enclosures based on compliance with the IEC standards provided MSHA's specified list of modifications is also addressed in the submitted design.

DATES: *Effective Date:* This final rule is effective May 17, 2006. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 17, 2006.

FOR FURTHER INFORMATION CONTACT: For information concerning the technical content of the rule, contact David C. Chirdon, Chief Electrical Safety Division, Approval and Certification Center, MSHA, R.R. 1, Box 251 Industrial Park Road, Triadelphia, West Virginia 26059. Mr. Chirdon can be reached at *chirdon.david@dol.gov* (e-mail), 304–547–2026 (voice), or 304–547–2044 (facsimile). For information concerning the rulemaking process, contact Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Arlington, Virginia 22209–3939. Ms. Silvey can be reached at (202) 693–9440.

MSHA maintains a listserve on the Agency's Web site that enables subscribers to receive e-mail notification when MSHA publishes rulemaking documents in the **Federal Register**.

To subscribe to the listserve, visit MSHA's Web site at *http://www.msha.gov/subscriptions/subscribe.aspx*. You may obtain copies of this final rule in an alternative format by accessing the Internet at *http://www.msha.gov/REGSINFO.HTM*. The document is also available by calling 202–693–9440.

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2003, MSHA published a final rule, Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards (68 FR 36407). The final rule established alternate requirements for testing and evaluation of products that MSHA approve for use in gassy underground mines under 30 CFR parts 18, 19, 20, 22, 23, 27, 33, 35, and 36. The final rule permitted manufacturers seeking MSHA approval of their products to use an independent laboratory to test their products in accordance with Agency standards. The final rule also allowed manufacturers to test their products in accordance with non-MSHA standards once the Agency had determined that the non-MSHA standards were equivalent to MSHA's applicable product approval requirements or could be modified to provide at least the same level of protection. The final rule requires that MSHA publish in the **Federal Register** a listing of all equivalency determinations in 30 CFR part 6 and in the applicable approval parts of 30 CFR.

At the time the final rule was promulgated, 30 CFR part 7 already allowed an applicant or third party to test certain products to MSHA standards. Specifically, part 7 specified requirements for MSHA approval of applicant or third party testing and evaluation of equipment and materials for use in underground mines that do not involve subjective testing. Paragraph 7.10(b) required MSHA to publish our intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. In addition, paragraph 7.10(c) required MSHA to list our equivalency determinations in 30 CFR part 7.

On December 1, 2003, MSHA announced in the **Federal Register** (68 FR 67216) our intent to review the International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements (IEC 60079–0); Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" (IEC 60079–1); and Part 11, Intrinsic Safety (IEC 60079–11). The **Federal Register** notice solicited comments concerning the Agency's intent to review the IEC standards.

MSHA has not yet completed a review of the IEC standard for Electrical Apparatus for Explosive Gas Atmospheres, Part 11, Intrinsic Safety (IEC 60079–11). Those results will be published separately at a later date.

The IEC is a worldwide organization for standardization comprising all national electrotechnical committees. The IEC promotes international cooperation concerning standardization in the electrical and electronic fields. To this end, the IEC publishes international standards in the fields of electricity, electronics, and related technologies. The IEC standards referenced in this notice are subparts of the IEC standards for hazardous location equipment.

A 60-day comment period was provided which closed on January 30, 2004. Comments were received from four (4) commenters. Two commenters suggested that MSHA should deem the IEC standards equivalent in their unmodified form and urged us to pursue participation in the international agreement between countries relative to the IEC standards known as the "IECEx Scheme." The goal of the IECEx Scheme is to facilitate international trade in electrical equipment intended for use in explosive atmospheres (Ex equipment) by eliminating the need for multiple national certifications while preserving an appropriate level of safety. Two commenters suggested additional standards for MSHA to consider reviewing for equivalency in the future. Because these comments are beyond the scope of this equivalency determination, the Agency will not address them here.

One commenter expressed concern over what it characterized as MSHA's intent to accept international approval standards as equivalent to U.S. standards for products used in coal mines. The commenter further expressed concern regarding the manner in which the standards would be tested and approved.

As we explained in the preamble to the 2003 final rule, Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards (68 FR 36408), MSHA will only accept standards as equivalent after carefully evaluating the standards to ensure that they provide at least the same degree of protection as existing 30 CFR requirements. With respect to part 7 equivalency determinations, MSHA will also determine whether the testing and evaluation of the non-MSHA standard involves subjective analysis, because the requirements in part 7 apply to certain equipment and materials whose product testing and evaluation does not involve subjective analysis. Where deficiencies are noted in the subject standards, MSHA will add additional requirements to ensure that at least the same degree of protection is provided as in existing requirements.

Further, MSHA will review all test and evaluation results submitted by independent laboratories to ensure that all applicable requirements of the standard and any additional requirements that MSHA specifies have been met. If the testing methodology or evaluation results do not clearly demonstrate that a product meets the applicable requirements, MSHA will conduct an independent evaluation including additional or repeat testing. MSHA will also continue the post-approval product audit program to ensure compliance with the approved design.

In the December 1, 2003, **Federal Register** notice MSHA stipulated that at the conclusion of the evaluation, the Agency would publish the final determination in the **Federal Register**. The determination would be accompanied by a list of modifications, if they are deemed necessary to achieve equivalency. This notice contains MSHA's final determination after evaluating the IEC standards.

II. Discussion

MSHA's review of the International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements (IEC 60079–0, Fourth Edition, 2004–01); and Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" (IEC 60079–1, Fifth Edition, 2003–11) is completed. These two IEC standards together describe the overall requirements for design of flameproof enclosures. The IEC 60079–1, Flameproof Enclosures "d" document provides the specific technical design and testing requirements for explosion-proof enclosures while the IEC 60079–0, General Requirements document provides the general application and use specifications for all IEC Electrical Apparatus for Explosive Gas Atmosphere standards. Applicants may request that MSHA grant product approval for explosion-proof (flameproof) enclosures based on compliance with these IEC standards provided our specified list of modifications is also addressed in the submitted design.

Equivalency Review Results for IEC 60079–0 and IEC 60079–1

The equivalency review for the IEC standards concerning Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements and Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" involved comparing them with MSHA's corresponding requirements for explosion-proof enclosures found in 30 CFR part 7—Testing by applicant or third party and part 18—Electric motor-driven mine equipment and accessories.

MSHA's technical review consisted of a detailed comparison of the IEC requirements for Group I (mining) enclosures to MSHA's requirements for explosion-proof enclosures. MSHA's requirements for explosion-proof enclosures are based on three principles. First, an enclosure shall be rugged in construction and suitable for use in mining applications. Second, it shall have a minimum structural yield pressure of at least 150 psig, without significant permanent distortion, and third, there shall be no visible luminous flames or ignitions of a combustible methane-air atmosphere surrounding the enclosure during explosion testing.

Part 7 specifies requirements for MSHA-approval of applicant or third party testing and evaluation of equipment and materials for use in underground mines that do not involve subjective testing. In addition to our review for equivalency, MSHA reviewed the IEC requirements for testing and evaluation of Group I (mining) enclosures to determine that they do not involve subjective analyses. We determined that the testing and evaluation of equipment using the applicable IEC standards, including MSHA's specified list of modifications, does not involve subjective analyses.

For the purpose of the equivalency review, MSHA organized the technical requirements for both the IEC standards being evaluated and MSHA's requirements according to certain features that were considered common to the design, construction, testing and evaluation of all explosion-proof enclosures. Technical requirements for features such as mechanical strength, flamepaths, lead entrances, and performance testing (including explosion tests and static pressure tests) were used as the basis for comparing the standards. Other factors such as insulating materials, electrical clearances, voltage limitations, and grounding methods were not addressed because these items are not considered part of the enclosure certification activities we currently perform.

Specific details of MSHA's findings of the Agency's equivalency review can be obtained from *http://www.msha.gov/Part6SingleSource/Part6SingleSource.asp* or by contacting the Electrical Safety Division, Approval and Certification Center, MSHA, R.R. 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, *chirdon.david@dol.gov* (e-mail), 304–547–2026 (voice), or 304–547–2044 (facsimile).

Based on MSHA's review, the Agency determined that the IEC standards could be modified to provide at least the same degree of protection as existing requirements. Thus explosion-proof enclosures that are designed and tested according to IEC Standards IEC 60079–0 (Fourth Edition, 2004–01) and IEC 60079–1 (Fifth Edition, 2003–11) may be submitted for MSHA product approval subject to the modification set out in the regulatory text below.

Section-by-Section Discussion

This final rule adds § 6.30, MSHA listing of equivalent non-MSHA product safety standards, which lists non-MSHA product safety standards MSHA have evaluated and determined to provide at least the same degree of protection with or without modifications. Subparagraph 6.30(a) specifies the IEC product safety standards reviewed for equivalency to MSHA's explosion-proof enclosure standards and references sections 7.10(c)(1) and 18.6(a)(3)(i) for a list of the required modifications.

Section 7.10, MSHA acceptance of equivalent non-MSHA product safety standards, is amended by revising paragraph (c) to include subparagraph (1) listing the specific product safety standard and (1)(i) through (1)(ix) specifying required modifications to provide the same degree of protection as MSHA requirements.

Subparagraph (a)(3) of § 18.6, Applications, is amended to include subparagraph (i) and subparagraphs (i)(A) through (i)(I). Subparagraph (i) lists the specific IEC product safety standards and subparagraphs (i)(A) through (i)(I) specify the modifications to the IEC standards required to provide the same degree of protection as MSHA requirements.

List of Subjects in 30 CFR Parts 6, 7, and 18

Incorporation by Reference, Mine Safety and Health, Reporting and Recordkeeping Requirements, Research.

Dated: May 3, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS

■ 1. The authority for part 6 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 2. Add § 6.30 to read as follows:

§ 6.30 MSHA listing of equivalent non-MSHA product safety standards.

MSHA evaluated the following non-MSHA product safety standards and determined that they provide at least the same degree of protection as current MSHA requirements with or without modifications as indicated:

(a) The International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements (IEC 60079–0, Fourth Edition, 2004–01) and Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" (IEC 60079–1, Fifth Edition, 2003–11) must be modified in order to provide at least the same degree of protection as MSHA explosion-proof enclosure requirements included in parts 7 and 18 of this chapter. Refer to §§ 7.10(c)(1) and 18.6(a)(3)(i) for a list of the required modifications. The IEC standards may be inspected at MSHA's Electrical Safety Division, Approval and Certification Center, R.R. 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059 and may be purchased from International Electrical Commission, Central Office 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland.

(b) [Reserved].

PART 7—TESTING BY APPLICANT OR THIRD PARTY

■ 3. The authority for part 7 continues to read as follows:

Authority: U.S.C. 957.

■ 4. Amend § 7.10 by revising paragraph (c) to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

* * * * *

(c) A listing of all equivalency determinations will be published in this

part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center. MSHA has made the following equivalency determinations applicable to this part 7.

(1) MSHA will accept applications for motors under Subpart J designed and tested to the International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas Atmospheres, Part 0, General Requirements (IEC 60079–0, Fourth Edition, 2004–01) and Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" (IEC 60079–1, Fifth Edition, 2003–11) (which are hereby incorporated by reference and made a part hereof) provided the modifications to the IEC standards specified in § 7.10(c)(1)(i) through (ix) are met. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The IEC standards may be inspected at MSHA's Electrical Safety Division, Approval and Certification Center, R.R. 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. These IEC standards may be obtained from International Electrical Commission, Central Office 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland.

(i) Enclosures associated with an electric motor assembly shall be made of metal and not have a compartment exceeding ten (10) feet in length. External surfaces of enclosures shall not exceed 150 °C (302 °F) in normal operation.

(ii) Enclosures shall be rugged in construction and should meet existing requirements for minimum bolt size and spacing and for minimum wall, cover, and flange thicknesses specified in paragraph(g)(19) of § 7.304 Technical requirements. Enclosure fasteners should be uniform in size and length, be provided at all corners, and be secured from loosening by lockwashers or equivalent. An engineering analysis shall be provided for enclosure designs that deviate from the existing requirements. The analysis shall show that the proposed enclosure design meets or exceeds the mechanical strength of a comparable enclosure designed to 150 psig according to existing requirements, and that flamepath clearances in excess of existing requirements will not be produced at an internal pressure of 150 psig. This shall be verified by explosion testing the enclosure at a minimum of 150 psig.

(iii) Enclosures shall be designed to withstand a minimum pressure of at least 150 psig without leakage through any welds or castings, rupture of any part that affects explosion-proof integrity, clearances exceeding those permitted under existing requirements along flame-arresting paths, or permanent distortion exceeding 0.040-inch per linear foot.

(iv) Flamepath clearances, including clearances between fasteners and the holes through which they pass, shall not exceed those specified in existing requirements. No intentional gaps in flamepaths are permitted.

(v) The minimum lengths of the flame arresting paths, based on enclosure volume, shall conform to those specified in existing requirements to the nearest metric equivalent value (e.g., 12.5 mm, 19 mm, and 25 mm are considered equivalent to ½ inch, ¾ inch and 1 inch respectively for plane and cylindrical joints). The widths of any grooves for o-rings shall be deducted in measuring the widths of flame-arresting paths.

(vi) Gaskets shall not be used to form any part of a flame-arresting path. If o-rings are installed within a flamepath, the location of the o-rings shall meet existing requirements.

(vii) Cable entries into enclosures shall be of a type that utilizes either flame-resistant rope packing material or sealing rings (grommets). If plugs and mating receptacles are mounted to an enclosure wall, they shall be of explosion-proof construction. Insulated bushings or studs shall not be installed in the outside walls of enclosures. Lead entrances utilizing sealing compounds and flexible or rigid metallic conduit are not permitted.

(viii) Unused lead entrances shall be closed with a metal plug that is secured by spot welding, brazing, or equivalent.

(ix) Special explosion tests are required for electric motor assemblies that share leads (electric conductors) through a common wall with another explosion-proof enclosure, such as a motor winding compartment and a conduit box. These tests are required to determine the presence of any pressure piling conditions in either enclosure when one or more of the insulating barriers, sectionalizing terminals, or other isolating parts are sequentially removed from the common wall between the enclosures. Enclosures that exhibit pressures during these tests that exceed those specified in existing requirements must be provided with a warning tag. The durable warning tag must indicate that the insulating barriers, sectionalizing terminals, or other isolating parts be maintained in order to insure the explosion-proof integrity for either enclosure sharing a common wall. A warning tag is not required if the enclosures withstand a static pressure of twice the maximum value observed in the explosion tests.

(2) [Reserved]

* * * * *

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

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

Authority: 30 U.S.C. 957, 961.

■ 6. Amend § 18.6 by revising paragraph (a)(3) to read as follows:

§ 18.6 Applications.

(a) * * *

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part. A listing of all equivalency determinations will be published in 30 CFR part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center. MSHA has made the following equivalency determinations applicable to this part 18.

(i) MSHA will accept applications for explosion-proof enclosures under part 18 designed and tested to the International Electrotechnical Commission's (IEC) standards for Electrical Apparatus for Explosive Gas

Atmospheres, Part 0, General Requirements (IEC 60079–0, Fourth Edition, 2004–01); and Part 1, Electrical Apparatus for Explosive Gas Atmospheres, Flameproof Enclosures "d" (IEC 60079–1, Fifth Edition, 2003–11) (which are hereby incorporated by reference and made a part hereof) provided the modifications to the IEC standards specified in § 18.6(a)(3)(i)(A) through (I) are met. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The IEC standards may be inspected at MSHA's Electrical Safety Division, Approval and Certification Center, R.R. 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These IEC standards may be obtained from International Electrical Commission, Central Office 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland.

(A) Enclosures shall be made of metal and not have a compartment exceeding ten (10) feet in length. Glass or polycarbonate materials shall be the only materials utilized in the construction of windows and lenses. External surfaces of enclosures shall not exceed 150 °C (302 °F) and internal surface temperatures of enclosures with polycarbonate windows and lenses shall not exceed 115 °C (240 °F), in normal operation. Other non-metallic materials for enclosures or parts of enclosures will be evaluated, on a case-by-case basis, under the new technology provisions in § 18.20(b) of this part.

(B) Enclosures shall be rugged in construction and should meet existing requirements for minimum bolt size and spacing and for minimum wall, cover, and flange thicknesses specified in paragraph (g)(19) of § 7.304 Technical requirements. Enclosure fasteners should be uniform in size and length, be provided at all corners, and be secured from loosening by lockwashers or equivalent. An engineering analysis shall be provided for enclosure designs that deviate from the existing requirements. The analysis shall show that the proposed enclosure design meets or exceeds the mechanical strength of a comparable enclosure designed to 150 psig according to existing requirements, and that flamepath clearances in excess of existing requirements will not be produced at an internal pressure of 150 psig. This shall be verified by explosion testing the enclosure at a minimum of 150 psig.

(C) Enclosures shall be designed to withstand a minimum pressure of at least 150 psig without leakage through any welds or castings, rupture of any part that affects explosion-proof integrity, clearances exceeding those permitted under existing requirements along flame-arresting paths, or permanent distortion exceeding 0.040-inch per linear foot.

(D) Flamepath clearances, including clearances between fasteners and the holes through which they pass, shall not exceed those specified in existing requirements. No intentional gaps in flamepaths are permitted.

(E) The minimum lengths of the flame arresting paths, based on enclosure volume, shall conform to those specified in existing requirements to the nearest metric equivalent value (*e.g.*, 12.5 mm, 19 mm, and 25 mm are considered equivalent to ½ inch, ¾ inch and 1 inch respectively for plane and cylindrical joints). The widths of any grooves for o-rings shall be deducted in measuring the widths of flame-arresting paths.

(F) Gaskets shall not be used to form any part of a flame-arresting path. If o-rings are installed within a flamepath, the location of the o-rings shall meet existing requirements.

(G) Cable entries into enclosures shall be of a type that utilizes either flame-resistant rope packing material or sealing rings (grommets). If plugs and mating receptacles are mounted to an enclosure wall, they shall be of explosion-proof construction. Insulated bushings or studs shall not be installed in the outside walls of enclosures. Lead entrances utilizing sealing compounds and flexible or rigid metallic conduit are not permitted.

(H) Unused lead entrances shall be closed with a metal plug that is secured by spot welding, brazing, or equivalent.

(I) Special explosion tests are required for explosion-proof enclosures that share leads (electric conductors) through a common wall with another explosion-proof enclosure. These tests are required to determine the presence of pressure piling conditions in either enclosure when one or more of the insulating barriers, sectionalizing terminals, or other isolating parts are sequentially removed from the common wall between the enclosures. Enclosures that exhibit pressures during these tests that exceed those specified in existing requirements must be provided with a warning tag. The durable warning tag must indicate that the insulating barriers, sectionalizing terminals, or other isolating parts be maintained in order to insure the explosion-proof integrity for either enclosure sharing a common wall. A warning tag is not required if the enclosures withstand a static pressure of twice the maximum value observed in the explosion tests.

(ii) [Reserved]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 4, 6, 14, and 21

RIN 2900–AL10

Adjudication; Fiduciary Activities—Nomenclature Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; technical correction.

SUMMARY: The Department of Veterans Affairs (VA) published a document in the **Federal Register** on July 17, 2002 (67 FR 46868), amending its adjudication and fiduciary regulations to update certain titles in parts 3 and 13. At that time, we failed to update parts 1, 4, 6, 14, and 21 to reflect the new titles. This document corrects those regulations by replacing the titles of Adjudication Division, Adjudication Officer, and Veterans Services Officer, with Veterans Service Center, and Veterans Service Center Manager. These nonsubstantive changes are made for clarity and accuracy.

DATES: *Effective Date:* May 17, 2006.

FOR FURTHER INFORMATION CONTACT: Trude Steele, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: VA published a document in the **Federal Register** on July 17, 2002, at 67 FR 46868, amending 38 CFR parts 3 and 13 to reflect the reorganization of the Adjudication and Veterans Services Divisions into Veterans Service Centers and to reflect the elimination of the positions of the Adjudication Officer and the Veterans Services Officer and the creation of the position of the Veterans Service Center Manager. At that time, we failed to update parts 1, 4, 6, 14, and 21 to reflect the new position. This document simply updates parts 1, 4, 6, 14 and 21 to reflect the change.

Administrative Procedures Act

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 4

Disability benefits, Pensions, Veterans.

38 CFR Part 6

Disability benefits, Life insurance, Loan programs-veterans, Military personnel, Veterans.

38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs-veterans, Health care, Loan programs-education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 10, 2006.

Robert C. McFetridge,

Acting Assistant to the Secretary for Regulation Policy and Management.

■ For the reasons set forth in the preamble, 38 CFR parts 1, 4, 6, 14, and 21 are amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

§ 1.553(b) [Amended]

■ 2. Section 1.553(b) is amended by removing "Veterans Services Officer" and adding, in its place, "Veterans Service Center Manager".

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 3. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 4. Part 4 is amended by removing all references to "Adjudication Officer" and adding, in each place, "Veterans Service Center Manager".

§ 4.97 [Amended]

■ 5. In § 4.97, Note (1), immediately following diagnostic code 6724, remove "Adjudication Division" and add, in its place, "Veterans Service Center".

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

■ 6. The authority citation for part 6 continues to read as follows:

Authority: 38 U.S.C. 501, 1940–1963, 1981–1988, unless otherwise noted.

§ 6.21 [Amended]

■ 7. Section 6.21(a) is amended by removing "Veterans Services Officer" and adding, in its place, "Veterans Service Center Manager".

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 8. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

§ 14.629 [Amended]

■ 9. Section 14.629 introductory text is amended by removing "Adjudication Officer or Service Center Manager" and adding, in its place, "Veterans Service Center Manager".

§ 14.709 [Amended]

■ 10. Section 14.709 is amended by removing all references to "Veterans Services Officer" or "Veterans Service Officer" and adding, in each place, "Veterans Service Center Manager".

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation under 38 U.S.C.

■ 11. The authority citation for part 21, subpart A continues to read as follows:

Authority: 5 U.S.C. 501(a) 3100–3121, unless otherwise noted.

§ 21.50(d) [Amended]

■ 12. Section 21.50(d) is amended by removing "Adjudication Division" and adding, in its place, "Veterans Service Center".

Subpart D—Administration of Educational Assistance Programs

■ 13. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4009 [Amended]

■ 14. Section 21.4009(d) is amended by removing "Adjudication Officer" and adding, in its place, "Veterans Service Center Manager".

Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients

■ 15. The authority citation for part 21, subpart I continues to read as follows:

Authority: Pub. L. 98–543, 38 U.S.C. 501 and chapter 15, sections specifically cited, unless otherwise noted.

§ 21.6056 [Amended]

■ 16. Section 21.6056(b) is amended by removing "Adjudication Division" and adding, in its place, "Veterans Service Center" each time it appears.

■ 17. The undesignated center heading preceding § 21.6420 is revised to read as follows:

Coordination With the Veterans Service Center

■ 18. Section 21.6420 is amended by:

■ a. Revising the section heading.

■ b. In the introductory text, removing "Adjudication Division" and adding, in its place, "Veterans Service Center".

The revisions read as follows:

§ 21.6420 Coordination with the Veterans Service Center.

* * * * *

Subpart J—Temporary Program of Vocational Training and Rehabilitation

■ 19. The authority citation for part 21, subpart J continues to read as follows:

Authority: Pub. L. 98–543, sec 111; 38 U.S.C. 1163; Pub. L. 100–687, sec. 1301.

§ 21.6521 [Amended]

■ 20. Section 21.6521(b) is amended by removing "Adjudication Division" and adding, in its place, "Veterans Service Center" each time it appears.

[FR Doc. 06–4579 Filed 5–16–06; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6127–32; I.D. 051006B]

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

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,859 nm² (6,376 km²), east of the Great South Channel, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours May 19, 2006, through 2400 hours June 2, 2006.

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

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

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

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

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

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

On May 5, 2006, an aerial survey reported a sighting of five right whales in the proximity 41° 24′ N. lat. and 67° 42′ W. long. This position lies east of the Great South Channel. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas; weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

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

The DAM Zone is bound by the following coordinates:

41° 45′ N., 68° 12′ W. (NW Corner)
41° 45′ N., 67° 13′ W.
41° 03′ N., 67° 13′ W.
41° 03′ N., 68° 12′ W.
41° 45′ N., 68° 12′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Closure Area II for Northeast

Multispecies found at 50 CFR 648.81(b) and Georges Bank Seasonal Closure Area found at 50 CFR 648.81(g). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

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

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

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

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.The restrictions will be in effect beginning at 0001 hours May 19, 2006, through 2400 hours June 2, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

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

Classification

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

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

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

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

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

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

Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

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

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

Dated: May 11, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 06–4613 Filed 5–12–06; 2:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 95
Wednesday, May 17, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Docket no. AO–14–A73, et al.; DA–03–10]

Milk in the Northeast and Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; recommended decision.

7 CFR part	Marketing area	AO Nos.
1001 ...	Northeast	AO–14–A73.
1005 ...	Appalachian	AO–388–A14.
1006 ...	Florida	AO–356–A37.
1007 ...	Southeast	AO–366–A43.
1030 ...	Upper Midwest	AO–361–A38.
1032 ...	Central	AO–313–A47.
1033 ...	Mideast	AO–166–A71.
1124 ...	Pacific Northwest	AO–368–A34.
1126 ...	Southwest	AO–231–A67.
1131 ...	Arizona Las-Vegas.	AO–271–A39.

SUMMARY: This document recommends changes to the fluid milk product definition for all Federal milk marketing orders and is based on the record of a hearing held June 20–23, 2005, in Pittsburgh, Pennsylvania. Specifically, this document recommends maintaining the current 6.5 percent nonfat milk solids criteria and incorporating an equivalent 2.25 percent true protein criteria in determining if a product meets the fluid milk product definition. This decision also proposes to clarify how milk and milk-derived ingredients should be priced under all orders. In addition, "drinkable" yogurt products containing at least 20 percent yogurt, kefir and products designed to be meal replacements, regardless of packaging, are proposed to be exempted from the fluid milk product definition.

DATES: Comments should be submitted on or before July 17, 2006.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Stop 9200–Room 1031, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9200. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments by e-mail to: *amsdairycomments@usda.gov*. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Henry H. Schaefer, Economist, USDA/AMS/Dairy Programs, Upper Midwest Milk Market Administrators Office, Suite 210, 4570 West 77th Street, Minneapolis, Minnesota 55435–5037, (952) 831–5292. E-mail address: *hschaefer@fmma30.com*; or Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231–Room 2971–S 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 604–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an habitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacture is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 2005, the month the hearing was held, 52,425 dairy farmers were pooled on the Federal order system. Of the total, 49,160, or 94 percent were considered small businesses. During the same month, 1,530 plants were regulated by or reported their milk receipts to their respective Market Administrator. Of the total, 847, or 55 percent were considered small businesses.

This decision recommends maintaining the current 6.5 percent nonfat milk solids criteria and adding a minimum true protein standard of 2.25 percent to the fluid milk product definition. These criteria are not intended to be absolute determinates of

whether a product meets the fluid milk product definition. The form and intended use of the product will be the primary criteria used by the Department for determining whether a product meets the fluid milk product. The proposed amendments also would not consider beverages containing 20 percent or more yogurt as an ingredient in the finished product or Kefir as meeting the fluid milk product definition. In addition, this decision recommends removing the requirement that meal replacements be packaged in hermetically-sealed containers to be exempt from the fluid milk product definition.

The proposed amendments to the fluid milk product definition set out the criteria for determining if the use of producer milk and milk-derived ingredients in such products should be priced at the Class I price. The established criteria for the classification of producer milk established are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing fluid milk products. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, record keeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring its applicability to small businesses.

Prior documents in this proceeding: Notice of Hearing: Issued April 6, 2005; published April 12, 2005 (70 FR 19012).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1031-Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by the July 17, 2006. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Some evidence was received that specifically addressed these issues, and some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held in Pittsburgh, Pennsylvania, on June 20–23, 2005, pursuant to a notice of hearing issued April 6, 2005; published April 12, 2005 (70 FR 19012).

The material issues on the record of the hearing relate to:

1. Amending the fluid milk product definition.

Findings and Conclusions

This decision recommends maintaining the current 6.5 percent nonfat milk solids criteria and incorporating an equivalent 2.25 percent minimum true protein criteria in determining if a product meets the fluid milk product definition. This decision proposes that for purposes of computing the true protein or nonfat milk solids content of a product, all milk-derived ingredients be included.

This decision also proposes to exempt from the fluid milk product definition "drinkable" yogurt products (often referred to as smoothie products) that contain at least 20% yogurt, Kefir, and dietary products designed to be meal replacements that are marketed to the health care industry regardless of packaging. As proposed, such products would be considered Class II products and the dairy ingredients included in these products would be priced at the Federal order Class II price.

Federal milk orders currently specify that a fluid milk product shall include any milk product in fluid or frozen form that contains less than 9 percent butterfat that is intended to be used as beverages. The fluid milk product definition contains a non-definitive list of dairy products that are fluid milk products. It also sets a maximum upper limit on the butterfat contained in a product of 9 percent and a lower limit of 6.5 percent nonfat milk solids by weight for a product to be considered a fluid milk product. Dairy products that do not fall within these limits are not considered fluid milk products and the milk used to produce these products are classified in Class II, Class III or Class IV depending on the form or purpose for which the products are to be used.

Eleven proposals were published in the hearing notice for this proceeding. Proposals 1, 3, 4, and 6 were abandoned at the hearing by there proponents in support of other noticed proposals. No further reference to these proposals will be made.

A proposal published in the hearing notice as Proposal 2, offered by Dairy Farmers of America, Inc. (DFA), seeks to amend the fluid milk product definition to include any dairy ingredient, including whey, when calculating the milk contained in a product on a protein-equivalent or nonfat solids equivalent basis. DFA is a dairy farmer-member owned cooperative whose members milk is pooled throughout the Federal order system.

H.P. Hood LLC (H.P. Hood), which owns and operates milk processing and manufacturing plants in the Eastern and Midwest United States, is the proponent of a proposal published in the hearing notice as Proposal 5 that was modified at the hearing. As modified, Proposal 5 seeks to amend the fluid milk product definition to include any product that, based upon substantial evidence as determined by the Department, directly competes with other fluid milk products and that the Department must make a written determination before any product can be reclassified as a fluid milk product.

A proposal published in the hearing notice as Proposal 7 was offered by the National Milk Producers Federation (NMPF). NMPF consists of 33 dairy-

farmer member cooperatives that represent more than 75 percent of U.S. dairy farmers. Proposal 7 seeks to amend the fluid milk product definition by removing the reference "6.5 percent nonfat solids standard and whey," and adopting a 2.25 percent true milk protein criteria. During the hearing, DFA offered a modification to Proposal 7 by seeking to authorize the Department to make an interim classification determination for new products that result from new technology. The Department would then convene a hearing to address the use of the new technology in classification decisions and make a final classification determination for the new product within one year.

A proposal published in the hearing notice as Proposal 8 seeks to amend the fluid milk product definition by excluding yogurt-containing beverages. This proposal was offered by The Dannon Company, Inc. (Dannon), a wholly owned subsidiary of The Danone Group, which produces yogurt and fresh dairy products in 40 countries including the United States.

A proposal published in the hearing notice as Proposal 9 also seeks to amend the fluid milk product definition by excluding drinkable food products that contain at least 20 percent yogurt by weight from the fluid milk product definition. Proposal 9 was offered by General Mills, Inc. (General Mills), a food manufacturer that markets such products as Yoplait yogurt and yogurt-containing products in over 100 countries, including the United States.

A proposal published in the hearing notice as Proposal 10 was offered by the Novartis Nutrition Corporation (Novartis). Novartis is a company that develops and manufactures products, including milk based products, designed to meet specific nutritional needs. Proposal 10 seeks to amend the fluid milk product definition by removing the 6.5 percent nonfat milk solids standard and excluding formulas prepared for dietary use.

A proposal published in the hearing notice as Proposal 11 seeks to amend the fluid milk product definition by excluding healthcare beverages distributed to the healthcare industry. Proposal 11 was offered by Hormel Foods, LLC (Hormel), a wholly-owned subsidiary of Hormel Foods Corporation and manufacturer of a variety of food products primarily for the health care industry.

A witness appearing on behalf of National Milk Producers Federation (NMPF) testified in support of Proposal 7. The witness testified that Proposal 7 would close loopholes in the current fluid milk product definition that have allowed products developed as a result of new technology to avoid classification as a fluid milk product. The witness said that the 6.5 percent nonfat solids standard should be eliminated and replaced with a 2.25 percent protein standard that would also include whey proteins in determining if the product meets the protein standard. The witness stressed that whey proteins should be defined as whey proteins that are a by-product of the cheese making process. The witness was of the opinion that adoption of Proposal 7 would not alter the classification of any product currently being marketed.

The NMPF witness stressed that Federal order regulations have always adapted to marketing conditions and that the current fluid milk product definition should be amended to reflect changes in market conditions brought about by changes in technology. The witness testified that technology has evolved such that milk can now be separated into numerous components that can be recombined to create a vast number of new milk products. The witness argued that new technology has enabled manufacturers to manipulate milk components, such as removing lactose or substituting whey for other milk solids, to create new products that contain less than 6.5 percent nonfat milk solids. This enables manufacturers of the new products to avoid classification of the new product as a fluid milk product even though the form and use does not differ from what is currently considered as fluid milk products.

The NMPF witness testified that Carb Countdown®, a product manufactured by the H.P. Hood Company, contains whey and has a reduced lactose content that results in its composition below 6.5 percent nonfat milk solids standard. According to the witness, two market research studies suggest that the product is similar in form and use to traditional fluid milk. Relying upon a market study conducted by IRI, a market research firm, the witness related that 98.4 percent of Carb Countdown® sales are purchased as a substitute for fluid milk while only 1-percent of its sales are represented as an expansion of the fluid milk market.

The NMPF witness was of the opinion that classifying a product on the basis of protein is appropriate because protein is the highest valued skim component in the marketplace. The witness testified that a 2.25 percent protein standard is the appropriate equivalent of the current 6.5 percent nonfat milk solids standard. The witness asserted that protein has the most value to producers, processors and consumers because it contributes to milk nutrition, flavor and texture. While the witness was of the opinion that all dairy-derived ingredients should be used in computing the true protein standard of a product, the witness did not believe whey and whey product ingredients should be priced at the Class I price. The witness maintained that the use of whey and whey products should not exclude a product from the fluid milk product definition because manufactures are using whey in their new products to avoid a fluid milk product classification. The witness also noted that instead on relying upon the Food and Drug Administration (FDA) standard, the Department should provide its own definition of whey.

A post-hearing brief submitted on behalf of NMPF reiterated the positions they testified to at the hearing. The brief asserted that adoption of a protein standard would close regulatory loopholes that prevent products developed as a result of new technology from avoiding classification as a fluid milk product. According to the brief, adoption of a true protein standard merely changes the way milk proteins are accounted for and would not change the classification of any product. However, these changes would capture those products currently formulated to avoid being classified as a fluid milk product.

A witness from Dairy Farmers of America (DFA), appearing on behalf of DFA and Dairylea Cooperative, Inc., (DLC), testified in support of NMPF's Proposal 7 and Proposal 2. DFA is a dairy-member owned cooperative with 12,800 member farms located in 49 states. DLC is a dairy-member owned cooperative with 2,400 member farms located in seven states.

The DFA/DLC witness was of the opinion that the purpose of the hearing was to refine the fluid milk product definition to reflect current market conditions brought about by technological innovations to ensure that dairy farmers are equitably paid for their milk. The witness testified that dairy processing technology, such as ultra filtration and milk component fractionalization, has enabled new products to be developed that were not foreseen when the current classification definition was last considered.

The DFA/DLC witness testified that the current fluid milk product definition does not recognize the value of dairy proteins in the development of new products and therefore does not classify and subsequently price these new products appropriately. The witness claimed that manufacturers formulate

their products so as to contain less than 6.5 percent total nonfat milk solids to avoid a Class I use of milk even though these products compete directly with and are substitutes for fluid milk and fluid milk uses.

The DFA/DLC witness was of the opinion that the form and use of a product should be the primary factor in determining product classification. The witness said that secondary criteria used to make classification determinations should include such factors as: Product composition, a specific but not exclusive list of included and excluded dairy products, product substitutability and enhancement of producer revenue. The witness argued that eliminating the current total nonfat milk solids standard and replacing it with an equivalent milk protein standard would better reflect the demand for dairy proteins in the marketplace.

The DFA/DLC witness offered a modification to Proposal 7 that the witness said would provide the Department with latitude for classifying future products which are a result of new technology. The witness explained that the modification would allow the Department to make an interim classification decision for a new product and then have up to one year to hold a public hearing to determine the appropriate permanent classification.

The DFA/DLC witness also testified in support of Proposal 2. The witness said that its adoption would recognize the importance of dairy proteins in the marketplace by including all dairy protein sources, including whey and whey products, in computing the products protein content. However, said the witness, while whey and whey products would be used in classification determinations, those ingredients should not be priced as Class I.

A post-hearing brief submitted on behalf of DFA/DLC reiterated their support for adopting a protein standard. The brief reiterated their claim that new technology has enabled some products that contain less than 6.5 percent nonfat milk solids to be classified at a lower use-value than competitors in the market. The brief maintained that adoption of a protein standard would more adequately identify products that should be classified as fluid milk product's in light of new fractionation technology.

A witness appearing on behalf of O–AT–KA Milk Products Cooperative, Inc. (O–AT–KA) testified in support of Proposals 2 and 7. O–AT–KA is a cooperative owned by the dairy farmer members of Upstate Farms Cooperative, Inc.; Niagara Milk Cooperative, Inc. and Dairylea Cooperative, Inc. The witness was of the opinion that the development of new technology necessitates a change to the fluid milk product definition. However, the witness cautioned that changes should not capture all beverages which contain milk solids as fluid milk products because not all milk-containing beverages compete with fluid milk.

The O–AT–KA witness asserted that Proposal 7 should not be thought of as a fundamental change to the current standard; rather that the proposed true protein standard of 2.25 percent is an equivalent to the current 6.5 percent nonfat milk solids standard and should be considered as a needed clarification brought about by new technological advances in milk processing. According to the witness, the proposed 2.25 percent standard recognizes protein as a highly-valued ingredient in milk products and that products with less than 2.25 percent protein would remain exempt from fluid milk product classification. The witness also advocated the adoption of Proposal 2 which would include whey and whey products in the computation of the protein percentage of the product but would not price the whey ingredients at Class I prices.

A post-hearing brief, submitted on behalf of O–AT–KA, reiterated their support for Proposal 7. The brief claimed that the adoption of the protein standard would increase the use of dairy ingredients in beverages that are not "in the competitive sphere of the traditional milk beverages," thus increasing producer revenue. The brief also supported DFA/DLC's modification to Proposal 7 giving the Department authority to make an interim classification decision if a new product is a result of new technology.

A post-hearing brief submitted on behalf of Select Milk Producers, Inc. (Select) and Continental Dairy Products (Continental) expressed support for adoption of a protein standard as a component of the fluid milk product definition. According to the brief, Select and Continental are dairy-farmer owned cooperatives that market milk on various Federal orders. The brief argued that adoption of a protein standard is a needed change to reflect current manufacturing technology and does not fundamentally alter current regulations. The brief stressed that milk proteins are valuable ingredients in the market and that classification and pricing determinations should be reflective of this.

A witness appearing on behalf of H.P. Hood testified in opposition to any changes to the fluid milk product definition. The witness was of the opinion that the fluid milk product definition should not be amended in a manner that would classify more dairy products as fluid milk products unless data is provided which would conclude such products compete directly with fluid milk and such amendments would enhance producer revenue.

The H.P. Hood witness asserted that if Proposal 7 was adopted and resulted in the reclassification of some products as fluid milk products, the change would only affect a small number of products and the enhancement of producer revenue would be minimal. If ingredient substitution for milk occurred as a result of adopting other proposals, the witness said, producer revenue could actually decrease. The witness was of the opinion that adoption of proposals which broaden the fluid milk product definition would stifle product innovation and discourage the use of dairy-derived ingredients because of the resulting increased costs to the manufacturer. These results, the witness said, should not be encouraged by the Federal milk order program.

A post-hearing brief submitted on behalf of H.P. Hood reiterated their opposition of Proposal 7. The brief maintained that no disorderly marketing conditions exist to warrant a change to the fluid milk product definition and that proponents of the protein standard failed to meet the burden of proof required by the AMAA to make a regulatory change. The H.P. Hood brief reviewed many factors used by the Department in previous classification decisions to determine the proper classification of Class I products. Their list included, but was not limited to, demand elasticities, enhancement of producer revenue and product competition. The brief stated that proponents failed to provide adequate data addressing these factors or prove that disorderly marketing conditions exist to warrant a change, and urged the Department to terminate the proceeding.

A witness appearing on behalf of Leprino Foods Company (Leprino) testified in opposition to the adoption of the 2.25 percent protein standard contained in Proposal 7. According to the witness, Leprino operates nine plants in the United States that manufacture mozzarella cheese and whey products. The witness was of the opinion that a protein standard would reclassify products such as sport and protein drinks and yogurt smoothie products that are formulated with ingredients such as whey and whey products as fluid milk products. The witness stressed that broadening the fluid milk product definition to account for all dairy derived ingredients could

lessen the demand for such ingredients. The witness speculated that manufacturers may seek out other less costly non-dairy ingredient substitutes which would result in decreased producer revenue.

A witness appearing on behalf of Dannon testified in opposition to Proposals 2 and 7. The witness was opposed to the adoption of a protein standard and to the inclusion of whey when calculating the nonfat milk solids content of a product because, the witness said, it was not the original intent of the fluid milk product definition to include these milk-derived ingredients. The witness believed that adoption of a protein standard would cause more products to be classified as fluid milk products even though they do not compete with fluid milk. The witness argued that protein is not a major component of fluid milk products and therefore using a protein standard would not be appropriate for making classification determinations. The witness speculated that if a protein standard was adopted, it could stifle product innovation or cause food processors to use non-dairy ingredients in their food products. The witness also opposed Proposal 2 seeking to include whey proteins in determining the protein content of a product. The witness said that if whey proteins are included, manufacturers may look for less expensive non-dairy ingredients to be used as a viable substitute.

A post-hearing brief submitted on behalf of Dannon reiterated their opposition to the adoption of a protein standard claiming that adequate justification for such a change was not given by proponents at the hearing and that the mere ability to test for milk proteins does not justify its adoption.

A post-hearing brief submitted on behalf of the National Yogurt Association (NYA) expressed opposition to Proposal 7. According to the brief, NYA is a trade association representing manufacturers of live and active culture yogurt products and suppliers of the yogurt industry. The brief claimed that proponent testimony was inconsistent regarding the impact on product classification of their proposals and stated that if the 2.25 percent protein standard were adopted, at least one yogurt-containing product would be reclassified as a fluid milk product. The brief also asserted that proponents did not provide a clear picture of how Proposal 7 would be implemented. Specifically, the brief noted that the following were not addressed: (1) How wet and dry whey would be handled, (2) how whey from cheese production would be differentiated from whey from casein production, and (3) how products that meet the proposed 2.25 percent true protein standard and contain whey and other proteins would be classified and priced was not addressed.

The NYA brief speculated that including whey in the protein calculation would lead to more products being classified as fluid milk products and cause manufacturers to seek out less costly non-dairy ingredients. The potential loss to producer revenue by substitution with non-dairy ingredients, concluded the brief, is not supported by the record.

A post-hearing brief submitted on behalf of National Cheese Institute (NCI) expressed opposition to Proposal 7 and claimed that its adoption would stifle the use of dairy-derived ingredients, particularly whey proteins. According to the brief, NCI is a trade association representing processors, manufacturers, marketers and distributors of cheese and related products. NCI claimed that proponents of Proposal 7 did not identify any specific marketplace disorder that would be corrected by the adoption of a protein standard or list any product that would be reclassified if the fluid milk product definition were amended. The brief reviewed previous rulemaking decisions where proposals were denied because proponents failed to demonstrate that disorderly marketing conditions were present.

The NCI brief stressed that use of dairy-derived ingredients in a product should not automatically qualify a product as a competitor of fluid milk or that their classification in a lower-valued use negatively affects producer revenue. The brief further maintained that proponents did not adequately address why whey proteins should be included in determining if the product met the proposed protein standard for a fluid milk product and why whey should be priced at the Class I price. The brief concluded that whey should be excluded from the fluid milk product definition because its inclusion would lead to products being classified as fluid milk products even when they do not compete with fluid milk.

A post-hearing brief submitted on behalf of Sorrento Lactalis, Inc. (Sorrento) objected to the adoption of a protein standard. According to the brief, Sorrento is a manufacturer that operates five cheese plants throughout the United States. The brief stated that adoption of a protein standard as part of the fluid milk product definition would reduce the demand for dairy ingredients, especially whey proteins, which in turn will result in increased costs to manufacturers and reduced producer revenue.

A witness testifying on behalf of H.P. Hood was of the opinion that if the Department found changing the fluid milk product definition was warranted, adoption of a modified Proposal 5 would be appropriate. The witness said that adoption of Proposal 5 would provide the Department with standards to determine if a dairy product with less than 6.5 percent nonfat milk solids competes with and displaces fluid milk sales which would justify classification of the product as a fluid milk product. The witness also noted that if Proposal 5 was adopted, a new product with less than 6.5 percent nonfat milk solids and route distribution in a Federal milk marketing area of less than 3 million pounds would be exempted from classification as a fluid milk product. This distribution criteria, the witness explained, would allow manufacturers to test market a new product with the assurance that it would not be classified as a fluid milk product until the distribution threshold was exceeded.

A witness appearing on behalf of Leprino testified in support of Proposal 5. The witness was of the opinion that fluid milk products should only be those products that meet the FDA standard of identity for milk and cultured buttermilk and products that compete with milk and cultured buttermilk. The witness testified that the fluid milk product definition is currently too broad and as a result, has lessened the demand for dairy ingredients in new non-traditional dairy products because of the possibility of being classified as a fluid milk product. The witness argued that many of these new products do not compete for sales with fluid milk and their use of dairy-derived ingredients should not qualify them to be defined as a fluid milk product.

The Leprino witness explained that advances in technology have allowed the creation of dairy-derived ingredients through milk fractionation. The witness stated that the use of dairy-derived ingredients has made it difficult to classify products by their components. According to the witness, dairy manufacturers are avoiding investing in some product innovation because of the regulatory burden and increased costs that are associated with manufacturing a fluid milk product.

A witness testifying on behalf of DFA/DLC was opposed to the adoption of Proposal 5. The witness said that Proposal 5 would place an undue burden on the Department in making classification determinations and would also extend Class II classification to more products, neither of which the witness supported. The post-hearing

brief submitted by DFA/DLC reiterated their opposition.

A witness appearing on behalf of Bravo! Foods International Corporation, Lifeway Foods, Inc., PepsiCo, Starbucks Corporation and Unilever United States, Inc., testified in opposition to all proposals that would reduce or eliminate the 6.5 percent minimum nonfat milk solids standard, adopt a protein standard, or include whey in determining the nonfat milk solids content of a product. Hereinafter, these companies are referred to collectively as Bravo!, *et al.*

A post-hearing brief submitted on behalf of Bravo!, *et al.*, urged the termination of the proceeding except for the portion addressing the exemption of yogurt and kefir products from the fluid milk product definition. Bravo!, *et al.*, asserted that the hearing record does not support adoption of a protein standard. The brief stated that decisions to amend Federal order provisions are not made without clear evidence of disorderly market conditions, the potential shortage of milk for fluid use, or lowering of producer revenue. The brief also discussed letters sent to the Department by producers and manufacturers which urged that a hearing be postponed because more analysis and market data was needed to justify amending the current fluid milk product definition. Bravo!, *et al.*, argued that conducting the hearing was premature and without adequate study and market data on the proposals that are under consideration. According to the brief, more time was needed to accurately determine the impact of new milk products on the marketplace.

The Bravo!, *et al.*, brief summarized hearing testimony from previous Department rulemaking decisions where no changes were recommended due to a lack of evidence to support a regulatory change. The brief asserted that this proceeding also lacked evidence of disorderly marketing conditions which would warrant a change to the fluid milk product definition. According to Bravo!, *et al.*, proponents did not provide evidence of disorder in the marketplace nor did they substantiate their claims that products currently in the market would not be reclassified if a protein standard was adopted. On the basis of such conditions, the brief concluded that the current fluid milk product definition is adequate.

If the Department did not terminate the proceeding, the Bravo!, *et al.*, brief recommended that the 6.5 percent nonfat milk solids standards remain, that the computation of nonfat milk solids not be made on a milk equivalency basis, and that whey and whey ingredients be excluded from the computation.

A witness appearing on behalf of Fonterra USA, Inc. (Fonterra) testified in opposition to proposals that would include milk protein concentrates (MPCs) in determining if the product met the protein standard of the fluid milk product definition. Fonterra is a wholly owned subsidiary of Fonterra Co-operative Group Limited, a New Zealand based dairy cooperative owned by 12,000 New Zealand dairy farmers. Fonterra operates plants within the United States that produce, among other things, MPCs. The witness stressed that changes to the fluid milk product definition would increase ingredient costs, discourage manufacturing companies from using dairy ingredients in their products, and force those companies to seek other less costly substitutes such as soy and soy products.

A post-hearing brief submitted on behalf of Fonterra reiterated their objection to changing the nonfat milk solids standard and predicted that adoption of a protein standard would make classification decisions unnecessarily complicated without providing additional benefits to producers. The brief asserted that the hearing record did not contain a sufficient economic analysis on the possible benefits that adopting a protein standard would have on producer revenue or its impact on the dairy industry.

The Fonterra brief speculated that adoption of a protein standard would increase the market price for milk proteins, discourage new product development and encourage the substitution of producer milk with non-dairy ingredients. The brief noted that the annual growth rate of soy and soy products in nutritional products from 1999 to 2003 was 16.5 percent, while the growth of milk proteins in nutritional products only increased 10.1 percent over the same time period. The brief predicted that if protein prices rise as a result of the adoption of a protein standard, the growth of soy proteins will likely increase because they could be substituted for more costly milk proteins.

The Fonterra brief also stated that the hearing record does not reveal disorder in the market by the application of the current fluid milk product definition and therefore concluded that amending the fluid milk product definition is not justified. The Fonterra brief also argued that proponents did not provide adequate reasoning for including whey proteins in determining if a product met the protein standard but not pricing whey proteins the same as other milk proteins. Furthermore, the brief stated that proponents did not propose a method for differentiating between whey proteins resulting from cheese production and whey proteins from other sources.

A witness appearing on behalf of the American Beverage Association (ABA) testified in opposition to all proposals seeking to amend the fluid milk product definition. ABA is a trade association that represents beverage producers, distributors, franchise companies and their supporting industries. The witness was of the opinion that the current fluid milk product definition already properly classifies dairy products and that there is insufficient evidence to warrant any changes. The witness claimed that any change would broaden the fluid milk product definition to include products that contain only small amounts of milk. The witness argued that many new beverage products which contain small amounts of milk or milk ingredients do not compete with fluid milk but do compete with soft drinks, juices and bottled water. The witness asserted that amending the fluid milk product definition to include some dairy ingredients not currently considered would increase manufacturers cost of production, result in stifled innovation of new products and encourage the use of non-dairy ingredients as substitutes for milk-derived ingredients.

A witness appearing on behalf of Ohio Farmers Union (OFU) testified in opposition to any change to the fluid milk product definition. The witness testified that the primary purpose of the Federal milk marketing order program was to provide consumers with a reliable supply of safe and wholesome milk. The witness asserted that MPC's, caseinates, whey proteins and other similar milk-derived ingredients have functional and nutritional characteristics different than fluid milk. Accounting for those ingredients in the fluid milk product definition, the witness said, would undermine the goal of the Federal milk order program. The witness stressed that if the fluid milk product definition was amended, consumer confidence in the long established perception of milk as a fresh, pure and wholesome beverage would be diminished and would thus threaten the economic viability of domestic producers.

A witness appearing on behalf of the Milk Industry Foundation (MIF) testified in opposition to amending the fluid milk product definition. According to the witness, MIF is an organization

with over 100 member companies that process and market approximately 85 percent of the fluid milk and fluid milk products consumed nationwide. The witness stated that simply because a beverage contains milk or other dairy-derived ingredients does not prove the proponents claim that those products compete with fluid milk or that such competition lowers producer revenue.

The MIF witness asserted that previous Federal milk order rulemaking decisions have required data and analysis to prove that an amendment is warranted. According to the witness, the proponents of proposals for changing the fluid milk product definition did not provide such data and analysis. Along this theme, the witness said that proponents should have provided data such as the market share held by products that do not fall under the current fluid milk product definition but would be included under any proposed change, cross price elasticity of demand analysis of products which meet the existing fluid milk product definition and of products that would be classified as a fluid milk product if any of their proposals were adopted, and an own-price elasticity of demand analysis for products that would be reclassified.

A post-hearing brief submitted on behalf of MIF reiterated their opposition to any changes to the current fluid milk product definition. The brief urged that if the Department does amend the fluid milk product definition, it should exclude all whey-derived protein products in determining if a product meets the fluid milk product definition. The brief stated that MIF has continuously opposed a hearing to consider amending the fluid milk product definition because they are of the opinion that not enough evidence is available to warrant a change. The brief maintained that proponents did not offer adequate data at the hearing to demonstrate that there is disorder in the marketplace that can be remedied by adoption of a protein standard.

The MIF brief expanded their testimony by citing numerous rulemaking decisions which denied proposals on the basis that adequate evidence was not presented to warrant amendments to order provisions. MIF stressed that the mere existence of beverages which contain dairy-derived ingredients is not evidence of marketwide disorder

A witness appearing on behalf of the National Family Farm Coalition (NFFC) testified in opposition to all proposals that would amend the fluid milk product definition. The witness testified that MPCs do not meet FDA's Generally Recognized as Safe (GRAS) standards as legal food ingredients. Furthermore, the witness said, MPCs have not been subjected to scientific testing to determine if they are safe for human consumption and should not be allowed in milk products.

A witness appearing on behalf of Public Citizen testified in opposition to proposals that seek to amend the fluid milk product definition. According to the witness, Public Citizen is a non-profit consumer advocacy organization with approximately 150,000 members. The witness was opposed to any change in the fluid milk product definition that would, in the witnesses' opinion, encourage the use of MPCs.

Two Pennsylvania dairy farmers testified in opposition to any change to the fluid milk product definition. The producers opposed all proposals that would allow the use of caseinates and MPCs in fluid milk products. They asserted that MPCs are not allowed in the production of standardized cheese and should also not be allowed in the production of fluid milk products.

A post-hearing brief submitted on behalf of the American Dairy Products Institute (ADPI), an association representing manufacturers of dairy products, offered support for amending the fluid milk product definition to include milk beverages that compete directly with fluid milk. However, the brief cautioned against developing a fluid milk product definition that would include non-traditional beverages and smoothie type (yogurt-containing beverages) products. The brief recommended that an economic study be conducted to determine the possible impacts of the proposed changes before action is taken to amend the fluid milk product definition.

A post-hearing brief submitted on behalf of General Mills contended that the fluid milk product definition should not be amended because proponents did not provide sufficient evidence or data that would justify the change. The brief maintained that the hearing record is not clear on how proposals would be implemented or on the impact to producers, manufacturers, and consumers if the protein standard was adopted. General Mills contended that before a change is made, the Department should conduct an economic analysis to evaluate how protein and products are competing in the marketplace and how the adoption of a protein standard would impact the marketplace. If a protein standard was recommended for adoption, General Mills recommended that whey not be included in the protein calculation, or if whey is included, that a 2.8 percent protein standard be adopted in order to maintain the status quo.

A post-hearing brief submitted on behalf of New York State Dairy Foods, Inc. (NYSDF) opposed amending the fluid milk product definition. According to their brief, NYSDF is a trade association representing dairy product processors, manufacturers, distributors, retailers and producers in the Northeast United States. The brief argued that products produced with the use of new fractionation technology are a small portion of the milk beverage market. They were of the opinion that such products are still too new to determine their impact on Class I sales and producer revenue. The brief also asserted that adoption of a protein standard as part of the fluid milk product definition would discourage new product development and would increase costs that would result in reduced sales of dairy-derived ingredients. The brief urged that the proceeding be terminated.

A Professor from Cornell University testified regarding a research study, conducted by the Cornell Program on Dairy Markets and Policy, focusing on the demand elasticity's of various dairy products. The witness did not appear in support of or in opposition to any proposal presented at the hearing. The witness explained that the goal of the study was to ascertain the extent to which product innovation and classification decisions influence producer revenue. The study was designed to evaluate four hypothetical dairy products and test the effect that a range of classification determinations would have on producer revenue. The witness explained the study concluded that the impact on producer revenue of a new product being reclassified from Class II to Class I was likely to be small, plus-or-minus $0.01 per hundredweight (cwt.) However, the witness added, if non-dairy ingredients were substituted as a result of the reclassification, the study predicted that the effect on producer revenue would be lowered by $0.22 per cwt. The witness concluded that while the financial returns from product reclassification could be positive, the resulting ingredient substitution which could take place would result in a significant negative impact on producer revenue.

The NMPF brief also addressed concerns articulated at the hearing regarding the need for a demand elasticity study to address the issue of product substitution before amending the fluid milk product definition. The brief asserted that a demand elasticity study would not take into account newly emerging products, changing

consumer preferences, and product innovations that could change the competitive relationships between products and therefore would not provide any relevant data. The brief also argued that the economic model created by Cornell University and discussed at the hearing contained many incorrect assumptions and thus concluded that the study results were flawed.

The DFA/DLC brief also rebutted opposition to Proposal 7 that called for studies of product usage or demand elasticity's before considering amendments to the fluid milk product definition. The brief asserted the previous amendments to the classification system have been made without such economic studies and that this proceeding should be handled in the same manner.

A witness appearing on behalf of Dannon testified in support of Proposal 8—the proposal that seeks to exclude yogurt containing beverages which contain at least 20 percent yogurt by weight from the fluid milk product definition. The witness argued that yogurt containing beverages are not similar in form and use to fluid milk products and should be excluded from the fluid milk product definition. The witness revealed that Dannon currently manufactures yogurt containing products which are classified as both fluid milk products and Class II products. Dannon maintained that regardless of the classification, none of their products compete with fluid milk. According to the witness these products should all be classified as Class II. The witness emphasized that unlike fluid milk, yogurt and yogurt-containing products use unique cultures, ingredients, and production technology that differentiate them from fluid milk products. Furthermore, the witness said, the products' packaging, taste, mouth feel, shelf-life and how they are marketed by their placement in the grocery store differentiates them from fluid milk.

The witness presented market research conducted by Dannon which concluded that yogurt-containing beverages are consumed as a food product and not as an alternative to fluid milk. The witness claimed that less than one percent of potential consumers of a Dannon yogurt-containing product consume the product as a substitute for fluid milk. Additionally, the witness noted that Dannon advertises its yogurt-containing products as a substitute for snacks, not fluid milk. The witness concluded from this that yogurt-containing products are different than fluid milk, do not compete with fluid milk in the marketplace and therefore should not be classified as a fluid milk product. The Dannon witness urged the adoption of Proposal 8 to exclude yogurt containing beverages with at least 20 percent yogurt by weight from the fluid milk product definition.

The Dannon witness also testified in opposition to Proposal 9 because it proposes adoption of a protein standard that Dannon does not consider justified. The witness noted that Dannon does support the proposed 20 percent minimum yogurt content standard that a product should contain as a condition for being exempted from fluid milk product classification.

A post-hearing brief submitted on behalf of Dannon reiterated their hearing testimony. The brief claimed that fluid milk products should only be those products that are closely related to, or compete with, fluid milk for sales. The brief stressed that yogurt-containing beverages are dissimilar to fluid milk beverages and are used as a food replacement, not as a beverage substitute. The brief noted that in 2004, more than 37 percent of Dannon's sales were from products developed within the last 5 years and stressed that classifying all milk drinks with milk-derived ingredients as fluid milk products would result in decreased innovation for developing additional uses for milk.

A witness appearing on behalf of General Mills testified in support of Proposal 9. The witness argued that the Department should classify products primarily on the basis of form and use and asserted that drinkable yogurt products, while containing milk ingredients, are food products and do not compete with fluid milk. The witness explained that drinkable yogurt products were created to meet a change in consumer preferences for convenience and portability. The witness presented market research conducted by Yoplait demonstrating that consumers view drinkable yogurt products as alternatives to traditionally packaged yogurt and other nutritional snacks, not fluid milk. The witness asserted that 80 percent of Yoplait drinkable yogurt smoothie consumers would substitute another yogurt product for the smoothie.

The General Mills witness advocated that the current classification system be maintained. However, if the Department determined that a change to the fluid milk product definition is appropriate, the witness urged adoption of Proposal 9 to exclude drinkable yogurt products that contain at least 20 percent yogurt by weight and 2.2 percent skim milk protein from the fluid milk product definition. According to the witness, including drinkable yogurt products in the fluid milk product definition would increase costs to manufacturers resulting in stifled innovation and a shift towards using non-dairy ingredients. The witness said this would be financially detrimental to both dairy farmers and dairy product manufacturers.

A post-hearing brief submitted on behalf of General Mills maintained that ample evidence regarding the fundamental differences of fluid milk and yogurt containing beverages was presented at the hearing to justify exempting yogurt containing products with more than 20 percent yogurt from classification as a fluid milk product.

Two witnesses appearing on behalf of the National Yogurt Association (NYA) testified in support of proposals that would exempt yogurt containing products from the fluid milk product definition. The witnesses testified that previous regulatory decisions made by the Department emphasized that products classified as fluid milk products should be intended to be consumed as beverages and compete with fluid milk. The witnesses expressed disagreement with a classification decision published in the 1990's that classified drinkable yogurt products as fluid milk products. The witnesses were of the opinion that in both form and use, yogurt and drinkable yogurt products compete with other food products, not fluid milk, and should accordingly be classified as Class II products. They explained that yogurt products are produced and shipped nationally by a few manufacturers, have a shelf-life averaging 30–60 days, have a texture and taste distinctly different than fluid milk and are positioned in retail stores separate from fluid milk. The witnesses noted that yogurt-containing beverages were developed as a substitute for spoonable yogurt products not fluid milk.

The NYA witnesses asserted that if a protein standard was adopted that resulted in yogurt containing products being classified as fluid milk products, manufacturers would look for less expensive non-dairy proteins as substitute ingredients. Furthermore, the witnesses believed that the increase in producer revenue resulting from classifying drinkable yogurt products as fluid milk products would not overcome the decrease in revenue due to the loss of sales from an increase in the price of drinkable yogurt products.

A post-hearing brief submitted on behalf of the NYA reiterated their support for excluding all products containing at least 20 percent yogurt

provided that the yogurt meets the standard of identity for yogurt. According to the brief, the 20 percent content requirement would ensure that only products whose characterizing ingredient is yogurt would be excluded from the fluid milk product definition. The brief also indicated that if the Department determines not to exclude yogurt containing products, then NYA strongly opposes any change to the current fluid milk product definition.

The NYA brief argued that consumer surveys and marketplace data provided by Dannon and General Mills, explaining how yogurt-containing products are fundamentally different than fluid milk, was not contradicted at the hearing. The brief also noted that while DFA and NMPF testified that consumers are buying low-carbohydrate milk instead of fluid milk, they did not offer similar evidence for yogurt-containing products.

A witness appearing on behalf of Bravo!, *et al.*, testified in support of amendments that would exempt yogurt containing products and drinkable kefir from the fluid milk product definition. The witness argued that both products are compositionally different than fluid milk and do not compete for sales with fluid milk. Furthermore, the witness noted that yogurt and kefir products are one of the fastest growing segments in the dairy industry, providing a large opportunity for the expanded use of dairy-derived ingredients which should not be hampered by the additional costs of such ingredients being priced at the Class I price.

The witness appearing on behalf of Leprino testified that if the Department recommended amending the fluid milk product definition, then Leprino supported the adoption of Proposal 9 to exclude products containing at least 20 percent or more yogurt by weight from the fluid milk product definition. The witness also was of the opinion that yogurt containing products do not compete with fluid milk and should be classified as Class II products. The witness stressed that if these products are not excluded from the fluid milk product definition, then Leprino strongly opposed the adoption of a protein standard to be part of the fluid milk product definition.

The witness appearing on behalf of NMPF testified in opposition to exempting yogurt-containing beverages from the fluid milk product definition. The witness believed that these products are similar in form and use to other flavored fluid milk products and should be considered a substitute for fluid milk. In its post-hearing brief, NMPF maintained its opposition to proposals that would exclude drinkable yogurt products from the fluid milk product definition.

The witness appearing on behalf of DFA/DLC also testified in opposition to the adoption of Proposals 8 and 9. The witness claimed that adoption of these proposals would allow more products to be classified as Class II products, even though they compete with fluid milk for sales.

The DFA/DLC brief further claimed that the growth of drinkable yogurt products in the market place has not been impeded by previous classification decisions and that such products should not be excluded from the fluid milk product definition because some hearing participants claimed it would harm the innovation of new dairy products.

The witness appearing on behalf of Leprino testified in support of Proposal 10. The witness testified that only products that compete with fluid milk should be classified as fluid milk products; therefore meal replacements and nutritional drinks should remain exempted from the fluid milk product definition.

A post-hearing brief submitted on behalf of Novartis stated that the Department should exempt special dietary need and nutritional beverages from the fluid milk product definition. The brief explained that Novartis' products are not currently classified as fluid milk products due to their nutritional nature, the level of nonfat milk solids contained in their product, and because their products are only available through foodservice and healthcare channels. The brief stressed that Novartis' health care products were never intended to compete with traditional fluid milk.

The brief predicted that Novartis' products could possibly become reclassified as fluid milk products if a 2.25 percent protein standard were adopted as a part of the definition. The brief insisted that if these products are reclassified, it would result in higher costs for patients with special dietary and nutrition needs. If a protein standard was adopted as part of the fluid milk product definition, Novartis urged the Department to exempt nutritional products consumed for special dietary use from the fluid milk product definition.

A witness appearing on behalf of Hormel testified in support of Proposal 11 seeking to exclude healthcare beverages from the fluid milk product definition. The witness testified that fluid milk products designed for the health care industry should be exempted because they do not compete with fluid milk for sales, their distribution is primarily to health care facilities, and they are targeted to a small segment of the population. The witness argued if products designed for the health care industry were classified as fluid milk products, it would have no effect on producer revenue because these products have extremely limited distribution. The witness explained that many products they manufacture are designed to help counter the effects of malnutrition in adults with a variety of medical conditions. These specially designed products are not marketed nor labeled as fluid milk, instead they are considered to be foods for special dietary use, the witness noted, and should be exempt from the fluid milk product definition.

The Bravo!, *et al.*, witness also testified in support of the continued exemption from the fluid milk product definition for products such as infant formula, meal replacements, products packaged in hermetically sealed containers, snack replacements, high protein drinks, and products that contain alcohol or are formulated for animal use. The witness explained that meal replacements and similar products have historically been exempted from the fluid milk product definition and that their regulatory status should not be changed.

The NMPF witness testified in opposition to Proposal 10 arguing that its adoption would eliminate important factors in determining if a product was specially formulated for a specific dietary purpose that would warrant exemption from the fluid milk product definition. The witness was also opposed to Proposal 11 because the proposed language—"nutrient enhanced fortified formulas"—was too broad and would not clearly distinguish such products from traditional fluid milk products.

The DFA/DLA witness testified in opposition to Proposals 10 and 11. The witness was of the opinion that amending the fluid milk product definition to broaden the exemption of products such as infant formulas and meal replacements was not justified because doing so would significantly lower Class I use. This position was reiterated in their brief.

The witness appearing on behalf of O-AT-KA testified that products packaged in hermetically-sealed containers or that are specialized for longer shelf life should remain exempt from fluid milk product classification because those products are used as meal replacements and meal supplements, not as alternatives to milk. The witness said that since the term "meal replacement"

is not defined in the current definition, no change in the exemption of hermetically sealed containers should be made. The position was reiterated in their brief.

The Dannon witness testified in opposition to the adoption of Proposal 10 because it would remove the 6.5 percent nonfat milk solids standard of the fluid milk product definition.

Findings: This decision recommends that the fluid milk product definition for all Federal orders maintain the current 6.5 percent nonfat milk solids product content criteria and incorporate an equivalent true protein standard of 2.25 percent product content criteria for determining whether a product meets the fluid milk product definition. The 6.5 percent nonfat milk solids and the 2.25 percent true protein criteria are not intended to be absolute determinates of whether a product meets the fluid milk product definition. In determining if a product meets the fluid milk product definition, the Department's primary criteria will be the form and intended use of the product as required by the Agriculture Marketing Agreement Act. The calculation of the percent true protein and the percent nonfat milk solids contained in a product will be performed by measuring the true protein and nonfat milk solids of all milk-derived ingredients contained in the finished product.

The primary goal of Federal milk marketing orders is to establish and maintain orderly marketing conditions. This is achieved primarily though the use of classified pricing (pricing milk based on its use) and the marketwide pooling of the proceeds of milk used in a marketing area among all classes of use. These two tools enable Federal orders to establish minimum prices that handlers must pay for milk based on use and return a weighted average or uniform price that dairy farmers receive for their milk. The AMAA specifies that Federal orders classify milk "* * * in accordance with the form in which or the purpose for which it is used." With respect to milk products, there can be many forms. In most cases, the form of the milk product provides a reasonable basis upon which to differentiate the milk into different classes of use.

Through classified pricing and marketwide pooling, Federal orders promote and maintain orderly marketing by equitably pricing milk used in the same class among competing handlers within a marketing area. This does not mean that handlers will necessarily have equal costs since differences in milk tests, procurement costs, and transportation will impact the final raw milk costs. However, it does allow handlers to have the same minimum regulated price for milk used in a particular category of products or class of products for which they compete for sales. The regulated minimum price is the class price for the respective class of use. Thus, it is reasonable and appropriate that milk used in identical or nearly identical products should therefore be placed in the same class of use. This tends to reduce the incidence of disorderly marketing that may arise because of price differences between competing handlers.

Federal milk orders classify producer milk (skim milk and butterfat) disposed of or used to produce a product. Producer milk classified as Class I consists of those products that are intended to be used as beverages including, but not limited to, whole milk, skim milk, low fat milk, and flavored milk products like chocolate milk. Producer milk classified as Class II includes milk used in the production of soft or spoonable manufactured products such as sour cream, ice cream, cottage cheese, yogurt, and milk that is used to manufacture other food products. Producer milk classified as Class III includes, among other things, skim milk and butterfat used in the production of hard cheese products. The Class IV use of producer milk generally consists of milk used in the production of any dried milk product such as nonfat dry milk and butter.

Federal orders provide a definition of a "fluid milk product" to identify the types of products that are intended to be consumed as beverages and to specify that the skim milk and butterfat in these types of milk products should be classified as Class I and priced accordingly. The current fluid milk product definition contained in all Federal milk orders provides a non-exhaustive list of products that are specifically identified as fluid milk products. The definition also specifies certain compositional criteria for fluid milk products—any product containing less than 9 percent butterfat and 6.5 percent or more milk solids nonfat. The definition also specifically exempts from the fluid milk product definition formulas especially prepared for infant feeding or dietary use (meal replacement) packaged in a hermetically-sealed container, any product that contains by weight less than 6.5 percent milk solids nonfat, and whey.

Numerous witnesses urged that the definition of milk (standard of identity) not be changed. This decision does not change the definition of milk as defined by the Food and Drug Administration (FDA) in 21 CFR 131.110. Some witnesses were of the opinion that the addition of various ingredients to milk would cause the resulting product to not meet the Grade A standard. Federal orders do not determine if milk is Grade A or what ingredients are allowed in milk. Federal orders do not establish standards of identity for milk. Such standards are established by other agencies such as a state board of health or the FDA. This decision does amend the definition of a fluid milk product in all marketing orders on the basis of form and intended use.

Testimony given at the hearing and positions taken in post-hearing briefs discussed extensively the importance of form and intended use in determining whether a product should be defined as a fluid milk product. In this regard, the legislation providing for milk marketing orders, as already discussed, provides for milk to be classified in accordance with the form in which or purpose for which it is used. This requirement should be the primary basis for classifying milk. In identifying the form and intended use of milk, all Federal orders currently define a fluid milk product as a product intended to be used as a beverage.

As in the 1974 uniform classification decision and subsequent classification decisions, this decision recommends that the primary criteria to be relied upon for determining whether or not a product should be considered a fluid milk product be its form and intended use. Fluid milk products are drinkable and are intended to be used as beverages. The fluid milk product definition also should continue to list the various products that are identified as fluid milk products and provide criteria to exclude those that are not. The identification of these various fluid milk products in the fluid milk product definition has not been, and is not now, intended to be an all inclusive list of products that are defined to be fluid milk products.

Comparability to the products listed in the fluid milk product definition should also assist in determining if other products should be defined as a fluid milk product. If a product is not one of the listed products but is similar to a listed product, this decision recommends that the form in which and the intended purpose for which the product is used be considered together with the product's composition.

Composition criteria, as currently provided, provides criteria to exclude products from the fluid milk product definition. The criteria that a fluid milk product must contain by weight more than 6.5 percent nonfat milk solids has

been a long-held criteria in defining and excluding products from the definition. However, Federal orders do not define nonfat milk solids. The record reveals that this has been administratively addressed in directives specifying which milk solids should be considered in determining the nonfat milk solids content of a product. Currently, not all nonfat milk solids are considered in this determination even though all of such solids are derived from milk.

This decision recommends continuing to rely, in part, on compositional criteria in determining if a product meets the fluid milk product definition. The fluid milk product definition would continue to state that a product should contain less than 9 percent butterfat and contain more than 2.25 percent true protein or 6.5 percent nonfat solids, by weight. The 9 percent butterfat criteria is currently used as the maximum butterfat content to differentiate between fluid milk products and products that are fluid cream products (a Class II use of milk) and should remain unchanged.

The 2.25 percent true protein criteria should, in most cases, be sufficient to distinguish if a product is a Class I or Class II use of milk. Nevertheless, products that may more closely resemble the listed fluid milk products in form and intended use but contain less than 2.25 percent true protein, may be determined by the Department to meet the fluid milk product definition because the products are competing with fluid milk.

The proposed composition criteria of the fluid milk product definition are not intended to be definitive in determining if a product meets the fluid milk product definition any more than the list of defined fluid milk products is definitive. Rather, the criteria are intended to assist in determining whether or not the product in question has the form and intended use as the listed fluid milk products. This gives first-priority consideration that the primary classification criteria be a product's form and intended use.

Record evidence reveals criticism that the current fluid milk product definition has not changed to reflect the technological advances including the fractionation of milk. While the dairy industry has changed significantly, the principles of product classification on the form and intended use have remained relatively unchanged since 1974. Technological advances that provide the ability to fractionate milk into its more basic components has given rise to the inadequacy of the current fluid milk product definition and the need for its revision. For example, the ability to separate proteins from the lactose and ash and to separate proteins between casein and "whey proteins" creates the opportunity to make new dairy-based beverages that may be similar to milk but are different in composition. A dairy-based beverage could be made from microfiltered "whey proteins", butteroil, lactose and water that would have equivalent butterfat, true protein, and nonfat solids as milk. Fractionation technology creates the ability to produce dairy-based beverages of almost any composition.

Several witnesses at the hearing addressed specific composition criteria that should be used for determining if a product meets the fluid milk product definition. Proponents of the 2.25 percent true protein criteria explained that with the technology to separate the lactose from the protein in milk, protein also should be used in determining if a product should be a fluid milk product because protein is the highest valued nonfat milk solid and because lactose is the component most often not used in the formulation of many manufactured dairy-based beverages. Under the current 6.5 percent nonfat milk solids criteria, a dairy-based beverage with lactose removed is generally determined to not be a fluid milk product. Milk, in either wet or dry form, that has lactose removed is generalized as "milk protein concentrate (MPC.)" MPC has administratively been excluded from being considered a nonfat milk solid even though it is derived from milk. Thus with lactose removed, a product closely resembling milk in form and intended use may contain less than the current 6.5 percent nonfat milk solids even though the protein content could exceed the protein content of milk.

Other testimony contended that protein is not a significant component in fluid milk products and incorporating a protein criteria is therefore not appropriate. Contrary to the view that protein is not a significant component in fluid milk products, in whole milk protein is the third most abundant component following lactose and butterfat. In lowfat milk, protein is the second most abundant component.

Even though the record and post hearing briefs contain considerable discussion concerning the possible substitution of nondairy ingredients in fluid milk products, no data was presented at the hearing to indicate at what price level or degree such substitution would take place. Testimony at the hearing speculated that handlers may use nondairy ingredients in the event that the fluid milk product definition were broadened, for example, by adoption of the 2.25 percent true protein criteria as an option to the current 6.5 percent nonfat milk solids criteria. Additionally, most handlers who are making new dairy-based beverages were of the opinion that broadening the fluid milk product definition would hinder innovation and new product development.

The addition of a true protein criteria should assist in determining those products that should be considered fluid milk products. The inclusion of a true protein minimum criteria also would assure that products which are comparable to the products listed in the fluid milk product definition will be properly classified as Class I. The 2.25 percent true protein criteria is comparable to 6.5 percent nonfat milk solids.

Proponent witnesses speculated that adoption of a 2.25 percent true protein criteria would not change the classification of products currently not determined to meet the fluid milk product definition. Classification determinations made by the Department are not available to the public because of the proprietary nature of the information; therefore the proponents have no basis to accurately conclude that adoption of a true protein standard would not alter any current products classification. To the extent that existing products meet the proposed fluid milk product definition, such products will be reclassified as fluid milk products.

The Class I use of milk will continue to be priced on skim milk and butterfat. Skim milk and butterfat pricing does not distinguish what components or the level of components that are in the skim fraction. Therefore, even if there is a greater level of protein in the skim fraction, there is no greater value that will be assigned to the skim fraction. Producers may benefit from products being determined as meeting the fluid milk product definition if the dairy ingredients in these products are priced as Class I and not because of the adoption of a 2.25 percent true protein criteria..

The true protein or nonfat milk solids contained in the finished product should be used to determine if the 2.25 percent true protein or the 6.5 percent nonfat solids criteria has been met. The composition of the finished product, including all milk-derived ingredients, will provide a clear comparison of the product in question to the products listed and defined in the fluid milk product definition. These ingredients include, but are not limited to, the specific products listed in the fluid milk definition, nonfat dry milk, milk protein

concentrate, casein, calcium and sodium caseinate, and whey. The compositional content will be computed by using the pounds of true protein or nonfat milk solids in the finished products. For all other purposes, such as pricing and pooling, the fluid equivalent of all dairy ingredients will be used except casein, sodium and calcium casienate and whey. These dairy ingredients may be used in some form to produce products that are substitutes for other fluid milk products.

Nonfat dry milk is a storable product that is subsequently used in many other products. Nonfat dry milk can be mixed with water and the resulting product can be marketed as skim milk in competition with fresh skim milk or, with the addition of cream or butter, and water, a product could compete with fresh whole milk. Federal milk orders have long held, and this decision reaffirms, that nonfat dry milk reconstituted to make a fluid milk product or to fortify a fluid milk product should be assessed the Class I value because the reconstituted or fortified product competes against Class I fluid milk products. The Class I charge, commonly referred to as an "up-charge" or compensatory payment, is based on the difference between the current months Class I price and Class IV price. The compensatory payment is assessed on the volume of reconstituted milk in the modified product, up to the level of an unmodified product. The compensatory payment accounts for the difference from how the dry product was first priced (Class IV) and how the dry product was actually used (Class I.)" The "up-charge" assures equity between competing handlers on raw product cost. The "up-charge" also assures producers that they will receive the Class I value's contribution to a marketing order's blend price for milk marketed as a fluid milk product. Most importantly, it maintains the integrity of classified pricing.

Milk protein concentrate (MPC) in both wet and dry (powdered) forms have similarities to nonfat dry milk even though MPC does not have the same component composition as skim milk or nonfat dry milk. Dry MPC, like nonfat dry milk, is the end result of a manufacturing process (the removal of water and lactose) to convert milk solids into a storable, easily transportable, and versatile product for use in the dairy and food industry. MPCs can be used as a substitute in drinkable/beverage products for the protein and some of the butterfat traditionally supplied by fresh milk, ultra-filtered skim milk, nonfat dry milk, or whole milk powder. These similarities in uses to nonfat dry milk support concluding that MPCs should be included in determining the nonfat milk solids or true protein content of a drinkable product and, on a fluid equivalent basis, be included in the allocation and pricing of producer milk contained in the fluid milk product.

Because casein, calcium and sodium caseinates and whey are milk-derived, they are recommended to be included in determining if a product is a fluid milk product. However, their use in fluid milk products will not be priced at the Class I price or be subject to an "up-charge" as will nonfat dry milk and MPC. These products can not readily be substituted for a listed fluid milk product as can nonfat dry milk and MPC. For example, whey contains little or no casein and only some of the lactose and ash of milk. Similarly, calcium and sodium caseinates do not contain the whey proteins (whether derived from cheese making or some other process) as well as the lactose and ash found in milk. Therefore, these and similar milk-derived ingredients will not be priced in products that are determined to be fluid milk products.

Milk-derived ingredients, except ingredients such as casein, calcium and sodium caseinate and whey, contained in a fluid milk product will be included in the allocation process of producer milk and the resulting classification and pricing on a fluid milk equivalent basis. Whey is intended to include whey, dry whey and whey protein concentrates. The fluid equivalent for those products in which the relationship between the protein and nonfat milk solids has not been altered will be computed using nonfat solids while the fluid equivalent for those products in which the relationship between the protein and nonfat milk solids has been altered will be determined on a true protein basis.

The computation of a handler's cost under Federal milk orders is unchanged as a result of this decision. These included products, such as nonfat dry milk and MPC will be used to determine the quantity of the fluid milk equivalent in the modified fluid milk product that is greater than the volume of an unmodified fluid milk product of the same type and butterfat content. The equivalent volume will be Class I and charged the Class I price while the greater volume will be an "other source receipt" and be included in Class IV. Any of the excess that may be allocated to Class I will be subject to an upcharge—at the difference between the Class I and Class IV prices.

Although the record lacks specific data concerning the possible changes in classification of current products as a result of adoption of this decision, the need for the continued use of the form and intended use criteria specified in the AMAA is clear. The record of this proceeding contains sufficient evidence to determine the criteria that can be relied upon for determining if a new product meets or does not meet the proposed fluid milk product definition. This is particularly evident since this decision does not recommend changing the primary criteria of classifying milk on the basis of its form and intended use.

Even though whey should be included in determining if a product meets the fluid milk product definition, whey should not be included in the pricing and pooling of fluid milk product that contains whey. In this regard, opposition to the inclusion of whey as a determinate of whether or not a product meets the fluid milk product definition because it may cause processors to use alternative protein sources in manufactured beverages and reduce producer revenue is rendered moot.

Since casein, sodium and calcium casinates and whey used in making a fluid milk product could have been previously priced under a Federal milk order, previous pricing should not be a criterion for determining if a dairy ingredient should continue to be included in pricing of the fluid milk product in which casein, sodium and calcium casinates and whey are contained. Other criteria, such as substitutability for fluid milk products, are better determinates for including a dairy ingredient in the computation of the criteria and the pricing of such products.

Some witnesses testified that even though a product met the fluid milk product definition, the intended use of that product should be considered for assigning the milk in that product to the most appropriate class use. In this regard, if the intended use of the product is a food item that does not compete with traditional fluid milk in the market place, the product should be exempted from the fluid milk product definition. The most notable products of this characteristic are drinkable yogurts which contain yogurt and other dairy products that are drinkable but are not intended to be used as a beverage. The record reveals that drinkable yogurts are marketed as a food item to supplement or even replace a meal such as breakfast or lunch, and are a quick and easy to carry snack. This differentiates their intended use from fluid milk products consumed as beverages or as accompaniments to other mealtime foods.

The record supports concluding that the intended use of drinkable yogurts are not for use as a beverage because they are marketed and positioned in the marketplace differently than fluid milk products. These products are not marketed along side milk in retail outlets. Instead, they are positioned alongside spoonable yogurts in cups. It is reasonable to conclude that drinkable yogurts do not compete with fluid milk products.

Nevertheless, it is also reasonable to establish a minimum level of yogurt that needs to be contained in the finished product to separate them from other drinkable yogurt-containing beverages. The proposed minimum content of yogurt of 20 percent offered by proponents is reasonable and is recommended for adoption for excluding drinkable yogurt products from the fluid milk product definition. The yogurt contained in exempted drinkable yogurt products must meet the yogurt standard of identity as defined by the FDA.

Opponents of excluding drinkable yogurts from the fluid milk products definition stress that these should not be excluded because they are beverages and are packaged similarly to other fluid milk products. Opponents are of the opinion that drinkable yogurts are fluid milk products because they are comparable to flavored or cultured fluid milk products. Drinkable yogurts do have several characteristics similar to listed fluid milk products—they can be used as a beverage and are similarly packaged. There are, however, other characteristics which differentiate drinkable yogurts from fluid milk products. These characteristics include, in most cases, a different consistency than the fluid milk products, a significant volume of added yogurt, the addition of fruit and not just flavorings, and live and active cultures supplied by the yogurt. These differences between listed fluid milk products and drinkable yogurts warrant the exclusion of drinkable yogurts containing at least 20 percent yogurt from being a fluid milk product. Drinkable products with less than 20 percent yogurt will be considered fluid milk products. The yogurt contained in those products with less than 20 percent yogurt will be priced at the Class II price and not be subject to an "up charge" as a result of their use in a fluid milk product.

One proponent for excluding drinkable yogurts from the fluid milk product definition sought to also include kefir. The only evidence provided to support excluding kefir from the fluid milk product definition was identifying kefir as a cultured product similar to drinkable yogurt. Kefir is a cultured product that, like drinkable yogurts, contains active cultures. While cultured beverages are one of the listed products in the fluid milk product definition, kefir's similarities to drinkable yogurts provide a reasonable basis to conclude that the milk used in kefir products should be classified in the same way as milk used in drinkable yogurt products. As with drinkable yogurts containing at least 20 percent yogurt, kefir should be exempt from the fluid milk product definition.

The exclusion of drinkable yogurts from the fluid milk product definition will have a minimal impact on the resulting uniform prices to producers. Less than one-half of one percent of the packaged fluid milk products distributed in 2004 were drinkable yogurt or kefir type beverages that are currently classified as fluid milk products. For 2004, it is estimated that if all of the current yogurt and kefir beverages had been Class II, the impact on producers, either through the uniform price or producer price differential, would have been a $0.0026 per hundredweight reduction on the more than 103 billion pounds of producer milk pooled on Federal orders.

Manufacturers of milk-based products that are intended to be used for dietary uses (meal replacements) testified that products sold for such dietary use in hermetically-sealed containers and the same product sold in other types of containers receive different regulatory classifications. Some products, such as those intended to be used for infant feeding and dietary needs (meal replacements), are currently considered Class II products if they are hermetically-sealed. However, the same product in a brick-pack or other types of packaging are considered fluid milk products. These products have a limited distribution and in the case of many of the dietary products, sales are only to health care facilities (such as hospitals and nursing homes) and they have a very long shelf life. The limited distribution and packaging these products indicates that they do not directly compete with Class I products. Most importantly, their intended use can be generalized as substitutes for meals by infants, the infirm and the elderly and not for use as a beverage.

This decision, in the narrow context of a highly specialized and marketed drinkable product sold to the healthcare industry, finds that packaging is not a legitimate criterion for considering some meal replacement products as Class II products and others in Class I. Whether the dietary products (meal replacements) are in hermetically-sealed containers or not, the dietary products (meal replacements) are intended to be used to replace the nutrition of normal meals in the health care industry and not intended to be used in the same manner as fluid milk. The dietary products packaged in other than hermetically-sealed containers still have the same basic form and intended use as those in hermetically-sealed containers and it is therefore reasonable that they should be similarly classified. Dietary products (meal replacements) should be excluded from the fluid milk product definition and should be considered Class II products.

To further clarify which products should be excluded from the fluid milk product definition, the term "meal replacement" is incorporated into the description detailing the intended meaning of dietary use. The term "meal replacement" will not include a fortified fluid milk product or fortified dairy beverage. The term "meal replacement" encompasses those dairy products that are truly intended to be a replacement for a meal. Meal replacements are categorized as those products sold to the health care industry and may include other products that are similar in form and intended use. This decision recommends adding the qualifier "sold to the health care industry" to the description of "dietary use (meal replacement)" and eliminating the need for dietary (meal replacement) products to be packaged in hermitically-sealed containers. By replacing "hermitically-sealed" with "sold to the health care industry," competing products will receive equitable regulatory treatment. This change should have a deminimus impact on producer milk revenue because most products considered to be meal replacements are currently Class II products and because the quantity of milk in these products relative to all milk pooled under Federal orders is very small.

In response to concerns that expanding exemptions of products from the fluid milk product definition would result in lower producer revenue, the record of this proceeding lacks the data to conclude that exempting certain milk-based products, or reclassifying current products from one class to another, will harm producer revenue. Any negative impact may be offset by other products that may be determined to meet the fluid milk product definition as a result of adoption of its recommended changes.

Proposal 5 calls for, in part, retaining the 6.5 percent nonfat solids criteria and giving the Department the flexibility to include as fluid milk products other products that fell below 6.5 percent

nonfat solids. At the hearing, the proposal was modified to require the Department to make other determinations and to conduct studies before a product is determined to meet the fluid milk product definition. The modified proposals would require the Department to determine if a product competes directly and substantially with FDA defined milk products. The modified proposal included five criteria for making the required determination and would require the Department to provide written determination of classification prior to the product being included as a fluid milk product. The modified proposal would also require that the handler market more than three million pounds in a Federal order per month before the product could be considered a fluid milk product even if the product met the proposed five criteria.

The criteria of Proposal 5, as modified, for determining if a product should be a fluid milk product are not reasonable and do not make the classification of milk on the basis of form and intended use. The additional criteria, including a comparison of retail prices, advertising, and substitutability between the new product and fluid milk products do not conform to the requirement of classification on the basis of form and intended use.

In addition, the data collection and analysis called for in Proposal 5's modification would be unduly burdensome to both the dairy industry and to the Department. The burden is also without significant improvement to product classification determinations and the potential loss of revenue to producers who would never recover lost revenue in the event a new product is determined to meet the fluid milk product definition.

A modification to Proposal 7 made at the hearing should not be adopted. This modification to require the Department to hold a hearing do determine the classification of a new product made by new technology is not necessary for the same reasons as in recommending that Proposal 5 not be adopted. Furthermore, there is no need to incorporate a specific requirement in to the order to hold a hearing when such an option is already available.

A number of opponents of proposals seeking to change the fluid milk product definition argued that there must necessarily exist a current problem in order to make amendments to the provisions of Federal milk marketing orders. This decision disagrees with such arguments. Anticipating problems and amending regulations to address anticipated changes in marketing conditions may be a valid action on the part of the Department to assure continued orderly marketing conditions and equity among producers and handlers. In this proceeding it is especially appropriate to have provisions that can address the future needs of a rapidly changing industry brought about by new technology.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Northeast and other marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1000 is proposed to be amended as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. The authority citation for 7 CFR Part 1000 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 1000.15 by revising paragraphs (a), (b) introductory text, and (b)(1), redesignating paragraph (b)(2) as (b)(4) and adding new paragraphs (b)(2) and (b)(3), to read as follows:

§ 1000.15 Fluid milk product.

(a) Fluid milk products shall include any milk products in fluid or frozen form intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored; cultured; modified with added or reduced nonfat solids, milk proteins, or lactose; sterilized; concentrated; or, reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids:

(b) Fluid milk products shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, yogurt containing beverages containing 20 percent or more yogurt by weight, Kefir, formulas especially prepared for infant feeding or dietary use (meal replacement) sold to the health care industry, and whey;

(2) Milk products containing more than 9 percent butterfat;

(3) Milk products containing less than 2.25 percent true milk protein and less than 6.5 percent nonfat milk solids, by weight, unless their form and intended

use is comparable to the products contained in paragraph (a)(1) of this section; and

* * * * *

§ 1000.40 [Amended]

3. Section 1000.40 is amended by revising paragraphs (b)(2)(iii) and (b)(2)(vi) to read as follows:

* * * * *

(b) * * *

(2) * * *

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, including yogurt containing beverages with more than 20 percent yogurt by weight, Kefir, and any other semi-solid product resembling a Class II product;

* * * * *

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are sold to the health care industry;

* * * * * *

Dated: May 12, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4591 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF29

Small Business Size Standards; Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the size standard for the Air Traffic Control (North American Classification Systems (NAICS) 488111), Other Airport Operations (NAICS 488119), and Other Support Activities for Air Transportation (NAICS 488190) industries from $6.5 million in average annual receipts to $21 million. The proposed revisions are being made to better define the size of a small business in these industries based on a review of industry characteristics.

DATES: Comments must be received by SBA on or before June 16, 2006.

ADDRESSES: You may submit comments, identified by RIN 3245–AF29, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments; (2) Fax: (202) 205–6390; or (3) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA has received a request from a Federal agency that contracts for services in the Other Airport Operations Industry to review this industry's existing $6.5 million size standard. This size standard was last revised in 2005 to incorporate an inflation adjustment to receipt-based size standards (70 FR 72577, December 19, 2005). SBA has not conducted a review of this industry's characteristics since the early 1980's. This agency believes that SBA should create a special size standard under NAICS 488119 for Federal contracts consisting of processing passengers and servicing aircraft for long range or international flights. Many of these contracts involve coordinating all aspects of passenger service (including customs clearances, security requirements) as well as aviation services (such as food service, janitorial services, and aircraft fueling services). The agency also pointed some of these activities individually have higher size standards (*i.e.*, the Food Service Contractors Industry and the Janitorial Services Industry have size standards of $19 million and $15 million, respectively, while the Aircraft Fueling Industry carries a 500-employee size standard). Although the Federal agency requested a review of the Air Airport Operations Industry, SBA decided to review also the Air Traffic Control Industry and Other Support Activities for Air Transportation Industries because many firms that perform Other Airport Operation Services also are active in these two industries.

Below is a discussion of the methodology used by SBA to review its size standards, and the analysis leading to the proposal to increase the size standard for the three industries comprising air transportation support activities from $6.5 million to $21 million in average annual receipts.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http://www.sba.gov/library/soproom.html*) describes four factors SBA considers for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics; (2) SBA program objectives and the impact of different size standards on these programs; (3) whether a size standard successfully excludes those businesses which are dominant in the industry; and (4) other factors if applicable. Other factors, including the impact on other Federal agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a proposed size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry.

Industry Analysis: Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics. SBA has two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and $6.5 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been adjusted periodically for inflation so that, currently, the anchor size standard is $6.5 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a "comparison group." A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. For purposes of this proposed rule, one comparison group comprises industries with the

nonmanufacturer anchor size standard of $6.5 million to assess whether the presumed anchor size standard is appropriate for the industry under review. SBA's analysis may also examine a second comparison group to evaluate thoroughly an appropriate size standard for an industry (which is the case for this proposed rule).

If the characteristics of a specific industry are similar to the average characteristics of the nonmanufacturer anchor comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the nonmanufacturer anchor comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the nonmanufacturer anchor comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) All or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry include average firm size, distribution of firms by size, start-up costs, and industry competition (13 CFR 121.102 (a) and (b)). SBA also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. "Average firm size" is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of the nonmanufacturer anchor comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the nonmanufacturer anchor comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases, a lower size standard.

2. "Distribution of firms by size" is the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is attributable to smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supported for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry.

In this proposed rule, SBA examines the percent of total industry sales cumulatively generated by firms up to a certain level of sales. For example, assume for the industry under review that 30 percent of total industry sales are generated by firms of less than $10 million in sales. This statistic is compared to a comparison group. For the nonmanufacturer anchor comparison group used in this proposed rule, firms of less than $10 million in sales cumulatively generated 49.4 percent of total industry sales. Viewed in isolation, the lower figure for the industry under review indicates a more significant presence of larger-sized firms in this industry than firms in the industries comprising the nonmanufacturing anchor comparison group and, therefore, a higher size standard may be warranted.

3. "Start-up costs" affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated average firm assets within an industry. Data from the Risk Management Association's Annual Statement Studies, 2000–2001, provide average sales to total assets ratios. These were applied to the average receipts size of firms in an industry to estimate average firm assets. An industry with a significantly higher level of average firm assets than that of the nonmanufacturer anchor comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower level of average firm assets when compared to the nonmanufacturer anchor comparison group, the anchor size standard would be considered the appropriate size standard or in rare cases, a lower size standard.

4. "Industry competition" is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the "four-firm concentration ratio"—to the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large companies, SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review.

5. "Impact of a size standard revision on SBA programs" refers to the possible impact a size standard change may have on the level of small business assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal contracting receipts, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on SBA's programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially

if it is already above the anchor size standard) may not be necessary.

Evaluation of Industry Size Standard: The two tables below show the industry structure characteristics for the industries of Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation, and for two comparison groups. The first comparison group is comprised of all industries with a $6.5 million receipts-based size standard referred to as the nonmanufacturing anchor group. Because SBA's size standards analysis is assessing whether the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation Industries' size standard should be moderately higher, or much higher than the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. In addition, this group includes a sufficient number of firms to afford a meaningful assessment and comparison of industry characteristics. The second comparison group consists of the nonmanufacturing industries with the highest receipt-based size standards established by SBA. SBA refers to this comparison group as the "nonmanufacturing higher-level size standard group." This group's size standards range from $23 million to $32.5 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to the characteristics of the higher-level size standards group. By doing so, SBA can assess whether a size standard should be among the highest size standards or somewhere between the anchor size standard and the highest receipts-based size standards.

SBA examined 2002 industry data prepared for SBA's Office of Advocacy by the U.S. Bureau of the Census (*http://www.sba.gov/advo/research/us_rec02.txt*), data from a U.S. Bureau of the Census report entitled "U.S. All Industries Data by Receipt: 2002," and data from the Risk Management Association's Annual Statement Studies, 2000–2001. SBA also examined Federal contract award data for fiscal years 2003–2004 from the U.S. General Service Administration's Federal Procurement Data Center, and SBA's internal loan database on SBA guaranteed loans.

Industry Structure Considerations: Table 1 shows data on three evaluation factors for the Air Traffic Control Industry, the Other Airport Operations Industry, the Other Support Activities for Air Transportation Industry, and the two comparison groups. These factors are average firm size, average firm assets, and the four-firm concentration ratio.

TABLE 1.—SELECTED INDUSTRY CHARACTERISTICS BY INDUSTRY CATEGORY

Industry category	Average firm size receipts (million)	Average firm assets (millions)	Four-firm concentration ratio (percent)
Air Traffic Control	$2.44	$2.47	88.7
Other Airport Operations	$4.61	$1.49	34.3
Other Support Activities for Air Transportation	$2.97	$0.66	22.4
Nonmanufacturing Anchor Group	$1.29	$0.60	14.4
Higher-level Size Standard Group	$4.73	$2.00	26.4

For the Air Traffic Control Industry, its average firm size in receipts is almost twice that of the average firm size in the nonmanufacturer anchor group, but it is significantly lower than the average firm size in the higher-level size standards group. This factor indicates a size standard within a range of $12 million to $14 million, which is approximately double the $6.5 million anchor size standard, may be warranted. The average firm assets factor is above the higher-level size standard group and provides a basis for increasing the current size standard within the $23 million to $32.5 million range. The four-firm concentration ratio provides support for a change to the current size standard. The factor is appreciably higher than the higher-level size standard group and it is at a sufficient level to suggest that the largest firms in the industry may have the ability to control the industry. To encourage competition, a very substantial increase to the size standard should be considered. In relation to the higher-level size standards group, the four-firm concentration ratio suggests a standard higher than $23 million is reasonable.

For the Other Airport Operations Industry, its average firm size is almost that of the higher-level size standards group. This factor indicates a size standard in the lower range of $23 million to $32.5 million may be warranted. The average firm assets factor is above the nonmanufacturing anchor group, but below the higher-level size standard group, and provides a basis for increasing the current size standard to a $14 million to $16 million range. The four-firm concentration ratio provides some support for a change to the current size standard, but is below the 40 percent level that would suggest the size standard should be changed because of this factor (see previous discussion of SBA's "Size Standards Methodology"). While the factor is appreciably higher than the average industry in the two comparison groups, the level of the size standard, however, should be based on the consideration of the other factors.

For the Other Support Activities for Air Transportation Industry, its average firm size in receipts is more than twice that of the average firm size in the nonmanufacturer anchor. This factor indicates a size standard within a range of $15 to $16 million, which is slightly more than double the $6.5 million anchor size standard, may be warranted. The average firm assets factor is almost equal to the nonmanufacturing anchor group and does not provide a basis for increasing the existing size standard. The four-firm concentration ratio provides some support for a change to the current size standard, but is below the 40 percent level that would suggest the size standard should be changed because of this factor (*see* previous discussion of SBA's "Size Standards Methodology"). While the factor is appreciably higher than the average industry in the nonmanufacturing anchor group, the level of the size standard, however, should be based on the consideration of the other evaluation factors.

Table 2 below examines the size distribution of firms. For this factor, SBA evaluates the percent of total sales cumulatively generated by firms at or below specific receipts sizes. For example, firms in the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air

Transportation Industries with $10 million or less in receipts cumulatively obtained 24.4 percent, 21.4 percent, and 24.8 percent, respectively, of total industry sales. Within the nonmanufacturing anchor group, these size firms captured 49.4 percent of total industry sales while similar firms in the higher-level size standards group captured 21.1 percent.

TABLE 2.—PERCENTAGE DISTRIBUTION OF FIRMS BY RECEIPTS SIZE

Industry category	Percent of industry sales by firm			
	< $1 million	< $5 million	< $10 million	< $50 million
Air Traffic Control	6.6	13.3	24.4	62.2
Other Airport Operations	3.9	17.5	21.4	33.5
Other Support Activities for Air Transportation	7.5	18.9	24.8	35.8
Nonmanufacturing Anchor Group	16.8	39.9	49.4	63.7
Higher-level Size Standard Group	3.8	13.3	21.1	40.4

Considering the overall distributions across size classes, an appropriate size standard for all three industries appears to be near or just above the higher-level size standards group, such as between $22 million to $24 million. The data for each industry is discussed below.

For the Air Traffic Control Industry, the data for three of the four size classes support a size standard well above the anchor size standard and at the lower range of the higher-level size standards. The size class of less than $50 million size class supports only a size standard at the anchor level. Overall, the size distribution factor supports a size standard in the at or near the lower range of the higher-level size standard group levels of $21 million to $23 million.

For the Other Airport Operations Industry, the data generally support a size standard that is well above the nonmanufacturing anchor group and within the higher-level size standard group. The three size classes, less than $1 million, $10 million, and $50 million, support a size standard around the higher-level size standard group. The less than $5 million size class supports a size standard well above the anchor size standard, but at or below the higher-level size standard. Overall, the size distribution factor supports a size standard between the lower range of the higher size standards group levels of $23 million to $25 million.

For the Other Support Activities for Air Transportation industry, the data for three percentage groups support a size standard that is well above the nonmanufacturing anchor group, but at or slightly below the higher-level size standard group. The data for the size class less than $50 million support a size standard well above the nonmanufacturing anchor group and within the higher-level size standard group. Overall, the size distribution factor supports a size standard at or just below the range of the higher-level size standard group levels of $21 million to $24 million.

SBA Program Considerations: SBA also considers the potential impact of changing a size standard on its programs. Because SBA's review of the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation Industries' size standards was prompted by concerns about the application of the size standard to Federal contracting, SBA examines the pattern of Federal contract awards to small businesses as one of the factors in evaluating whether the existing size standard should be revised.

In the case of Federal contracts to firms in the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation Industries, the share of Federal contracts awarded to small businesses provide a basis for revising the size standard. In fiscal years 2003 and 2004, small businesses in the Air Traffic Control industry received 11.5 percent of the total dollar value of Federal contracts, while small business in the Other Airport Operations industry received an average of 12 percent, and the Other Support Activities for Air Transportation industry received 4 percent. In addition, a cumulative average of 25 percent of the award actions went to small businesses in these three industries.

By comparison, the percentage of total industry sales cumulatively generated at or below the existing $6.5 million size standard, is 15.5 percent for the Air Traffic Control industry and 18.3 percent for the Other Airport Operations industry. The respective 11.5 percent and 12 percent of Federal contract dollars to small businesses are relatively low for the Air Traffic Control and Other Airport Operations. For the Other Support Activities for Air Transportation industry, the 4 percent small business Federal contract dollars share is extremely lower than the 20.1 percent of total industry sales cumulative generated by firms at or below the current $6.5 million size standard. These comparisons between industry-wide small business market share and the proportion of Federal contracting dollars to small business indicate that small businesses in these industries may have encountered difficulties in obtaining Federal contracts, and that a size standard much higher than $6.5 million may be warranted.

SBA also reviewed its financial assistance to small businesses in the air transportation support activities industries. In fiscal years 2003, 2004, and 2005, SBA guaranteed no loans for the Air Traffic Control industry; an average of nine loans totaling $2.4 million in the Other Airport Operations industry; and an average of 37 loans totaling $5.1 million for the Other Support Activities for Air Transportation industry. Almost 90 percent of the loans for the Other Airport Operations industry and the Other Support Activities for Air Transportation industry were made to firms less than half the current size standard. It is unlikely that an increase to the size standard would have an appreciable impact on the financial programs, and therefore, this factor is not part of the assessment of this industry's size standard.

SBA's Proposal: The analysis of each evaluation factor supports SBA proposing a $21 million size standard for each industry. SBA believes the presence of larger-sized firms in the industry, as evidenced by the factors of average size firm, the distribution of firms by size, and four-firm concentration ratio, is sufficiently strong to support a substantial change to the existing size standard. For the Air Traffic Control and the Other Airport Operations industries, most of the five evaluation factors support a size

standard at or near the lower range of the higher-level size standards. For both industries, one factor supports a size standard about double the $6.5 nonmanufacturer anchor size standard. Accordingly, SBA believes the data support a $21 million size standard that is near the lower range of the higher-level size standards. For the Other Support Activities for Air Transportation Industry, three of the five factors support a size standard significantly higher than the current $6.5 million size standard, with one factor supporting a size standard at or near the range of the lower range of the higher-level size standards. In consideration that many firms operate in each of the three air transportation support activities industries, SBA has decided to also propose a $21 million size standard for this industry to have a common size standard for closely related industries.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) Independently owned and operated, (2) not dominant in its field of operations and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that for the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Air Transportation industries no firm at or below the proposed size standard would be of a sufficient size to dominate its field of operation. The largest firm within the Air Traffic Control, the Other Airport Operations, and the Other Support Activities for Airport Transportation industries at the proposed size standard level generates less than 0.30, 0.25 and 0.20 percent, respectively, of total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard from exerting a controlling effect on this industry.

Alternative Size Standards: SBA considered an alternative size standard based on average number of employees instead of average annual receipts. This approach was considered in a proposed rule of March 19, 2004 (69 FR 13130) as part of proposal to restructure all of SBA's size standards. For the Air Traffic Control industry, a size standard in number of employees would not be appropriate. The average number of employees for this industry is 30, and for all firms with receipts below the proposed $21 million level, the average number of employees is 11. SBA is currently studying how to simplify its size standards. SBA proposed to establish a minimum employee size standard of 50, to reduce the number of size standards from 37 levels to 11, and to establish common size standards for related industries. If SBA had adopted the proposed minimum 50-employee size standard, potentially one or two of the largest four firms might qualify as a small business. If SBA established an employee size standard for the Air Traffic Control industry between 15 and 20 employees, it would be contrary to SBA's measures to simplify its size standards by increasing the number of size standard levels, and not establishing common size standards for related industries. For this reason, SBA has determined that a receipt-based size standard of $21 million for the Air Traffic Control industry is more appropriate.

In addition, concerns in the Other Airport Operations Industry perform their services with the use of subcontractors and part-time employees, i.e., janitorial, aircraft fueling, and food services. Because of the large proportion of part-time employees in this industry, SBA has decided to retain average annual receipts as the size standard measure. A receipts-based size standard will treat firms more equitably since firms will vary on the use of part-time employees and subcontractors. An employee-based size standard could unintentionally influence decisions of some firms to alter the use of part-time employees and subcontractors to remain eligible as small businesses.

Firms in the Other Support Activities for Air Transportation Industry provide specialized services for the air transportation industry, such as aircraft testing, repair, maintenance, and inspection. SBA considered converting this size standard from receipts to employees as activities in this industry tend to have a more stable workforce. A comparable size standard for this industry would be in the range of 100 to 125 employees. However, SBA decided to keep the size standard as one based on receipts because the emphasis on its restructuring effort is simplification. Many firms in this industry are also active in the Other Airport Operations industry, which does not lend itself to an employee-based size standard. If SBA decided to establish an employee-based size standard for Other Support Activities for Air Transportation, firms that are active in both industries could find themselves small in the Other Support Activities for Air Transportation industry, yet large in the Other Airport Operations industry, or vice-a-versa. The analysis provided above indicates that both industries require a similar receipts-based size standard.

SBA welcomes public comments on its proposed size standard for the Air Traffic Control, Other Airport Operations, and Other Support Activities for Aircraft Industries. Comments on alternatives, including the option of retaining the size standards at $6.5 million or establishing employee-based size standards as discussed above, should explain why the alternative would be preferable to the proposed size standards.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's

Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry. Based on that analysis, SBA believes that an adjustment in the size standard of the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation Industries is needed to better reflect the economic characteristics of small businesses in this industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses, such as 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses. HUBZone and SDB small businesses are also for Federal contracts awarded through full and open competition after application of the HUBZone or SDB price evaluation preference or adjustment. Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable, and competitive businesses. Under this proposed rule, 150 additional firms generating an average of 8 percent of sales in the three industries will obtain small business status and become eligible for these programs.

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $129 million per year under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted procurements. This represents 8 percent of the $1.6 billion in average Federal contracts awarded under NAICS 488111, 488119, 488190 during fiscal years 2003 and 2004. The added competition for many of these procurements also would likely result in a lower price to the Government for procurements reserved for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that one or two additional loans totaling $500,000 to $600,000 in new Federal loan guarantees could be made to these newly defined small businesses. This assumes that only one to two percent of the newly eligible small businesses will seek SBA financial assistance. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in this industry, if any.

The newly defined small businesses would also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

To the extent that up to 150 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a), SDB, or HUBZone firms. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs because mechanisms are currently in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. In addition, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or reserved for the 8(a) or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, there will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses, without regard to the exact size of the business.

The revision to the current size standards for the Air Traffic Control, Other Airport Operations, and Other Support for Air Transportation Industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's

objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities engaged in Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation. As described above, this rule may affect small entities seeking Federal contracts, SBA (7a) and 504 Guaranteed Loan Programs, SBA Economic Impact Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Air Traffic Control, Other Airport Operations, and Other Support Activities for Air Transportation industries addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, recordkeeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What is the need for and objective of the rule?

The revision to the size standard for the Air Traffic Control, Other Airport Operations, and Other Support for Air Transportation Industries more appropriately defines the size of businesses in this industry that SBA believes should be eligible for Federal small business assistance programs. SBA reviewed the structure of these industries using five factors that were compared with averages for two groups of industries. A review of the latest available data supports a change to the existing size standard.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that 150 additional firms out of 3,607 firms in all three industries would be considered small because of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate $1 billion in this industry out of a total of $12.7 billion in annual receipts. The small business coverage in this industry would increase by approximately eight percent of total receipts.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

The size standard may also affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, however, SBA cannot estimate the impact of a size standard change on each Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

SBA considered an alternative size standards based on average number of employees instead of average annual receipts. This approach was considered in a proposed rule of March 19, 2004 (69 FR 13130) as part of restructuring of size standards. For the Air Traffic Control industry, a size standard in number of employees would not be appropriate. The average number of employees for this industry is 30, and for all firms with receipts below the proposed $21 million level, the average number of employees is 11. SBA is currently studying how to simplify its size standards. In its March 19, 2004 rule, SBA proposed to establish a minimum employee size standard of 50, to reduce the number of size standards from 37 levels to 11, and to establish common size standards for related industries. If SBA had adopted the proposed minimum 50-employee size standard, potentially one or two of the largest four firms might qualify as a small business. If SBA established an employee size standard for the Air Traffic Control industry between 15 and 20 employees, it would be contrary to SBA's measures to simplify its size standards by increasing the number of size standard levels, and not establishing common size standards for related industries. For this reason, SBA has determined that a receipt based size standard of $21 million for the Air Traffic Control industry is more appropriate.

In addition, concerns in the Other Airport Operations industry perform their services with the use of subcontractors and part-time employees, i.e., janitorial, aircraft fueling, and food services. Because of the large proportion of part-time employees in this industry, SBA has decided to retain average annual receipts as the size standard measure. A receipts-based size standard will treat firms more equitably since firms will vary on the use of part-time employees and subcontractors. An employee size standard could unintentionally influence decisions of some firms to alter the use of part-time employees and subcontractors to remain as small businesses.

Firms in the Other Support Activities for Air Transportation industry provide specialized services for the air transportation industry like aircraft testing, repair, maintenance, and inspection. SBA considered converting this size standard from receipts to employees as activities in this industry tend to have a more stable workforce. A

comparable size standard for this industry would be in the range of 100 to 125 employees. However, SBA decided to keep the size standard receipts-based because of its emphasis on its restructuring effort is simplification. Many firms in this industry are also active in the Other Airport Operations industry, which does not lend itself to an employee-based size standard. If SBA decided to establish an employee-based size standard for Other Support Activities for Air Transportation, firms that are active in both industries could find themselves small in the Other Support Activities for Air Transportation industry, yet large in the Other Airport Operations industry, or vice-a-versa. The analysis provided above indicates that both industries require a similar receipts-based size standard.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. These comments should describe the alternative and explain why it is preferable to this proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry," under the heading "Subsector 488'Support Activities for Transportation," revise the entries for 488111, 488119, and 488190 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Subsector 488—Support Activities for Transportation		
488111	Air Traffic Control	$21.0	.....
488119	Other Airport Operations	21.0	.....
488190	Other Support Activities for Air Transportation	21.0	.....
*	* * * * *	*	*

Dated: March 17, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. 06–4619 Filed 5–16–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24779; Directorate Identifier 2006–NM–044–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; Model A310 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A300 airplanes and Model A310 airplanes and for certain Airbus Model A300–600 series airplanes. This proposed AD would require an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. This proposed AD also would require an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. This proposed AD also would require installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

DATES: We must receive comments on this proposed AD by June 16, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France,

for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24779; Directorate Identifier 2006–NM–044–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews. In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A300 airplanes and A310 airplanes and on certain Model A300 B4–600, B4–600R, and F4–600R series airplanes and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). The DGAC advises that the inserts on NSA5516–XXND and NSA5516–XXNJ type P-clips, which are used to retain wiring and pipes in wing and center fuel tanks, may swell and soften when immersed in fuel or fuel vapor. Investigation revealed that failed P-clips could chafe through the insulation of the wiring. Damage to wiring in the wing and center fuel tanks, if not corrected, could result in a possible fuel ignition source in the fuel tanks.

The DGAC advises that, as a result of fuel system reviews conducted by the manufacturer, continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks, as applicable, is also necessary to ensure that the unsafe condition of this AD is addressed.

Relevant Service Information

Airbus has issued the following service bulletins:

Airbus—	Airbus service bulletin—	Dated—
Model A300 airplanes	A300–28–0079	September 29, 2005.
	A300–28–0081	July 20, 2005.
Model A310 airplanes	A310–28–2142	August 26, 2005.
	A310–28–2143	July 20, 2005.
	A310–28–2153	July 20, 2005.

Airbus—	Airbus service bulletin—	Dated—
Model A300–600 series airplanes	A300–28–6064	July 28, 2005.
	A300–28–6068	July 20, 2005.
	A300–28–6077	July 25, 2005.

Service Bulletins A300–28–0081, A300–28–6068, and A310–28–2143 describe procedures for inspecting the left and right wing fuel tanks and center fuel tank to determine if any NSA5516–XXND and NSA5516–XXNJ type P-clips are installed for retaining wiring and pipes in any tank and corrective action if necessary. The corrective action is to replace any NSA5516–XXND and NSA5516–XXNJ type P-clips with NSA5516–XXNF type P-clips.

Service Bulletins A300–28–0079, A300–28–6064, and A310–28–2142 describe procedures for checking the electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and doing related investigative and corrective actions if necessary. The related investigative action is to measure the electrical resistance between the equipment and structure, if a blue coat is not present. The corrective action is to electrically bond the equipment, if the measured resistance is greater than 10 milliohms. Service Bulletins A300–28–0079, A300–28–6064, and A310–28–2142 also describe procedures for installing new bonding leads and electrical bonding points on certain equipment in the left and right wing fuel tanks and center fuel tank.

Service Bulletin A310–28–2153 describes procedures for installing new bonding lead(s) on the water drain system of the trim fuel tank and installing electrical bonding points on the ventilation intake system, vent float valves, ventilation system at numerous positions, water drain valve, water drain system, adapter-bulkhead, indicator-magnetic level, and scavenger fuel pump of the trim fuel tank.

Service Bulletin A300–28–6077 describes procedures for installing new bonding lead(s) on the water drain system of the trim fuel tank and installing electrical bonding points on the ventilation intake system, vent float valves, ventilation system at numerous positions, water drain valve, water drain system, adapter-bulkhead, and indicator-magnetic level of the trim fuel tank, for configuration 01 and 02 airplanes. Service Bulletin A300–28–6077 also describes procedures for installing electrical bonding points on the scavenger fuel pump of the trim fuel tank on configuration 03 airplanes and installing electrical bonding on the ventilation intake system of the trim fuel tank on configuration 04 airplanes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued airworthiness directive F–2006–031, dated February 1, 2006, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and French Airworthiness Directive."

Differences Between the Proposed AD and French Airworthiness Directive

The applicability of French airworthiness directive F–2006–031 excludes A300 airplanes on which Airbus Service Bulletins A300–28–0079 and A300–28–0081 were accomplished in service. French airworthiness directive F–2006–031 also excludes A310 airplanes on which Airbus Service Bulletins A310–28–2142 and A310–28–2143 were accomplished in service and, for airplanes equipped with trim fuel tanks, on which Airbus Service Bulletin A310–28–2153 was accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins, as applicable. This requirement would ensure that the actions specified in the service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved. These differences have been coordinated with the DGAC.

The applicability of French airworthiness directive F–2006–031 excludes A300–600 airplanes not equipped with trim fuel tanks that have received Airbus Modifications 12308 and 12495 in production. French airworthiness directive F–2006–031 also excludes A300–600 airplanes equipped with trim fuel tanks that have received Airbus Modifications 12308, 12495, 12294, and 12476 in production. However, the DGAC has informed us that the applicability of French airworthiness directive F–2006–031 should have excluded A300–600 airplanes not equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, and 12308 have been incorporated in production and A300–600 airplanes equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, 12308, 12294, and 12476 have been incorporated in production; therefore, we have excluded these airplanes in the applicability of this proposed AD.

Clarification of Inspection Terminology

The "inspection" specified in Service Bulletins A300–28–0081, A300–28–6068, and A310–28–2143 and the "check" specified in Service Bulletins A300–28–0079, A300–28–6064, and A310–28–2142 are referred to as a "general visual inspection" in this proposed AD. We have included the definition for a detailed inspection in a note in this proposed AD.

Costs of Compliance

There are about 29 Model A300 airplanes, 63 Model 310 airplanes, and 102 Model A300–600 series airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD. For some actions, the estimated work hours and cost of parts in the following table depend on the airplane configuration.

ESTIMATED COSTS

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
A300 airplanes.	Inspect wing and center fuel tanks for P-clips.	40	None	$3,200	29	$92,800
	Install bonding leads/points in wing and center fuel tank.	136–155	$3,800–$5,200	$14,680–$17,600	29	$425,720–$510,400
A310 airplanes.	Inspect wing and center fuel tanks for P-clips.	40	None	$3,200	63	$201,600
	Install bonding leads/points in wing and center fuel tank.	248–285	$8,840–$9,190	$28,680–$31,990	63	$1,806,840–$2,015,370
	Inspect and install bonding leads/points in the trim fuel tank.	53–61	$50–$70	$4,290–$4,950	63	$270,270–$311,850
A300–600 series airplanes.	Inspect wing and center fuel tanks for P-clips.	40	None	$3,200	102	$326,400
	Install bonding leads/points in wing and center fuel tank.	157–185	$8,840–$9,190	$21,400–$23,990	102	$2,182,800–$2,446,980
	Inspect and install bonding leads/points in the trim fuel tank.	2–61	$50–$70	$210–$4,950	102	$21,420–$504,900

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–24779; Directorate Identifier 2006–NM–044–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All Model A300 airplanes and Model A310 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; except those airplanes identified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Airplanes not equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, and 12308 have been incorporated in production.

(ii) Airplanes equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, 12308, 12294, and 12476 have been incorporated in production.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the service bulletin identified in Table 1 of this AD, as applicable.

TABLE 1.—SERVICE BULLETIN REFERENCES

For Airbus—	And the actions specified in—	Airbus service bulletin—	Dated—
Model A300 airplanes	paragraph (g) of this AD	A300–28–0081	July 20, 2005.
	paragraph (h) of this AD	A300–28–0079	September 29, 2005.
Model A310 airplanes	paragraph (g) of this AD	A310–28–2143	July 20, 2005.
	paragraph (h) of this AD	A310–28–2142	August 26, 2005.
	paragraph (i) of this AD	A310–28–2153	July 20, 2005.
Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes.	paragraph (g) of this AD	A300–28–6068	July 20, 2005.
	paragraph (h) of this AD	A300–28–6064	July 28, 2005.
	paragraph (i) of this AD	A300–28–6077	July 25, 2005.

Inspection and Corrective Actions

(g) Within 59 months after the effective date of this AD: Do a general visual inspection of the right and left wing fuel tanks and center fuel tank, if applicable, to determine if any NSA5516–XXND and NSA5516–XXNJ type P-clips are installed for retaining wiring and pipes in any tank, and do all applicable corrective actions before further flight after the inspection, by accomplishing all the actions specified in the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Installation of Bonding Leads and Points for Wing and Center Fuel Tanks

(h) Within 59 months after the effective date of this AD: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, by accomplishing all the actions specified in the service bulletin.

(1) In the center fuel tank, if applicable, do a general visual inspection of the electrical bonding points of the equipment identified in the service bulletin for the presence of a blue coat, and do all related investigative and corrective actions before further flight after the inspection.

(2) In the left and right wing fuel tanks and center fuel tank, if applicable, install bonding leads and electrical bonding points on the equipment identified in the service bulletin.

Installation of Bonding Leads and Points for the Trim Fuel Tank

(i) For Model A310 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; equipped with a trim fuel tank: Within 59 months after the effective date of this AD, install a new bonding lead(s) on the water drain system of the trim fuel tank and install electrical bonding points on the equipment identified in the service bulletin in the trim fuel tank, by accomplishing all the actions specified in the service bulletin, as applicable.

Parts Installation

(j) As of the effective date of this AD, no person may install any NSA5516–XXND or NSA5516–XXNJ type P-clip for retaining wiring and pipes in any wing, center, or trim fuel tank, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) French airworthiness directive F–2006–031, dated February 1, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7481 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23690; Directorate Identifier 2004–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Airbus Model A300 B2, A300 B4, and A300–600 series airplanes. The original NPRM would have superseded two existing ADs. One AD currently requires an inspection for cracks of the lower outboard flange of gantry No. 4 in the main landing gear (MLG) bay area, and repair if necessary. The other AD currently requires, among other actions, repetitive inspections of the gantry lower flanges, and repair if necessary. The original NPRM proposed to require new repetitive inspections for cracks in the lower flange of certain gantries, and repair if necessary, which ends the existing inspection requirements. The original NPRM also provided for optional terminating actions for the new repetitive inspections. This new action revises the original NPRM by including additional airplanes that were excluded from the applicability. We are proposing

this supplemental NPRM to detect and correct fatigue cracks in the lower flanges of gantries 1 through 5 inclusive in the MLG bay area, which could result in reduced structural integrity of the fuselage, and consequent rapid decompression of the airplane.

DATES: We must receive comments on this supplemental NPRM by June 12, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Governmentwide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA–2006–23690; Directorate Identifier 2004–NM–133–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an AD that supersedes AD 2003–26–10, amendment 39–13408 (69 FR 867, January 7, 2004), and AD 2004–18–13, amendment 39–13792 (69 FR 55329, September 14, 2004). The original NPRM applied to certain Airbus Model A300 B2 and A300 B4 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). The original NPRM was published in the **Federal Register** on January 26, 2006 (71 FR 4313). The original NPRM proposed to continue to require an inspection for cracks of the lower outboard flange of gantry No. 4 in the main landing gear (MLG) bay area, and repair if necessary. The original NPRM also proposed to continue to require repetitive inspections of the gantry lower flanges, and repair if necessary. In addition, the original NPRM proposed to require new repetitive inspections for cracks in the lower flange of certain gantries, and repair if necessary, which ends the existing inspection requirements. The original NPRM also proposed optional terminating actions for the new repetitive inspections.

Comments

We have considered the following comment on the original NPRM.

Request To Revise the Applicability

Airbus requests that airplanes on which Airbus Modifications 13037 (Airbus Service Bulletins A300–53–0380 and A300–53–6153) and 12413 (Airbus Service Bulletins A300–53–0360 and A300–53–6132), as applicable, have been installed in service, and airplanes on which Airbus Modification 12924 has been incorporated in production be excluded from Table 1—Applicability of the original NPRM. The commenter states that the effectivity of French airworthiness directive F–2005–091 R1, issued September 28, 2005, takes these modification into account, except for Airbus Modification 12924. The commenter states that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, plans to revise French airworthiness directive F–2005–091 R1 to address Airbus Modification 12924.

We do not agree with Airbus to exclude airplanes on which a particular modification or service bulletin has been accomplished in service. Paragraph (m) of this supplemental NPRM includes an optional terminating action for accomplishing the actions specified in Airbus Service Bulletin A300–53–0380, dated August 5, 2005; Airbus Service Bulletin A300–53–0360, dated May 3, 2002; Airbus Service Bulleitn A300–53–6132, dated February 5, 2002; or Airbus Service Bulletin A300–53–6153, dated August 24, 2005; as applicable. If an operator chooses to accomplish this optional terminating action, it must continue to operate the airplane in that configuration unless an alternative method of compliance is approved. Therefore, we have determined that excluding those airplanes from the applicability of this supplemental NPRM is not appropriate. This difference between French airworthiness directive F–2005–091 R1 and this supplemental NPRM has been coordinated with the DGAC.

We also do not agree with the commenter to exclude airplanes on which Airbus Modification 12924 has been incorporated in production. We have confirmed with the DGAC that the omission of this modification in French airworthiness directive F–2005–091 R1 was an oversight. However, since the issuance of the original NPRM, we have determined that all combinations of the Airbus modifications specified in the effectivity of French airworthiness directive F–2005–091 R1 include an in-service service bulletin. Therefore, we have revised Table 1 of the applicability of this supplemental NPRM to not include any exceptions for

accomplishing those Airbus modifications.

Change to Labor Rate

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change to the applicability discussed above expands the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

This proposed AD would affect about 165 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. Not all actions must be completed on all airplanes.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
One-time inspection (required by AD 2003–26–10).	1	$80	None	$80	23	$1,840.
One-time inspection (required by AD 2004–18–13).	4	80	None	$320	43	$13,760.
Repetitive inspections (required by AD 2004–18–13).	12	80	None	$960, per inspection cycle.	78	$74,880, per inspection cycle.
Repetitive inspections (new proposed actions).	16	80	None	$1,280, per inspection cycle.	78	$99,840, per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Optional action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes
Reinforcement specified in Airbus Service Bulletin A300–53–0380, dated August 5, 2005.	807	$80	Between $87,100 and $121,560 depending on kit purchased.	Between $151,660 and $186,120 depending on airplane configuration.	23
Reinforcement specified in Airbus Service Bulletin A300–53–6153, dated August 24, 2005.	807	80	Between $82,460 and $87,070 depending on kit purchased.	Between $147,020 and $151,630 depending on airplane configuration.	120
Reinforcement specified in Airbus Service Bulletin A300–53–0360, dated May 3, 2002.	Between 24 and 128 depending on airplane configuration.	80	Between $250 and $1,000 depending on kit purchased.	Between $2,170 and $11,240 depending on airplane configuration.	23
Reinforcement specified in Airbus Service Bulletin A300–53–6132, dated February 5, 2002.	109	80	Between $260 and $950 depending on kit purchased.	Between $8,980 and $9,670 depending on airplane configuration.	120

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendments 39–13408 (69 FR 867, January 7, 2004) and 39–13792 (69 FR 55329, September 14, 2004) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–23690; Directorate Identifier 2004–NM–133–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 12, 2006.

Affected ADs

(b) This AD supersedes ADs 2003–26–10 and 2004–18–13.

Applicability

(c) This AD applies to Airbus airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Affected Airbus airplanes
(1) All Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes
(2) All Model A300 B4–2C, B4–103, and B4–203 airplanes
(3) All Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes
(4) All Model A300 B4–605R and B4–622R airplanes
(5) All Model A300 F4–605R and F4–622R airplanes
(6) All Model A300 C4–605R Variant F airplanes

Unsafe Condition

(d) This AD results from a report of a large fatigue crack along the outboard flange of beam No. 4. We are issuing this AD to detect and correct fatigue cracks in the lower flanges of the left and right gantries 1 through 5 inclusive in the main landing gear (MLG) bay area, which could result in reduced structural integrity of the fuselage, and consequent rapid decompression of the airplane.

Compliance

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

Restatement of Requirements of AD 2003–26–10

One-Time Inspection

(f) For airplanes on which Airbus Modification 10147 has not been done: At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD: Do a one-time detailed inspection for cracking of the lower outboard flange of gantry No. 4 in the MLG bay area per paragraph 4.2.1 of Airbus All Operators Telex (AOT) A300–53A0371, Revision 01 (for Model A300 B2 and B4 series airplanes); or AOT A300–53A6145, Revision 01 (for Model A300–600 series airplanes); both dated September 10, 2003; as applicable.

(1) Before the accumulation of 8,000 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first.

(2) Within 30 days after January 22, 2004 (the effective date AD 2003–26–10).

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(g) Repair any cracking found during the inspection required by paragraph (f) of this AD before further flight, per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Restatement of Requirements of AD 2004–18–13

One-Time Inspection and Corrective Action

(h) For Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes, and Model A300 B4–2C, B4–103, and B4–203 airplanes, on which Airbus Modification 3474 has been done: Prior to the accumulation of 16,300 total flight cycles, or within 500 flight cycles after July 30, 1998 (the effective date of AD 98–13–37), whichever occurs later, perform a one-time ultrasonic inspection for cracking of the gantry lower flanges in the MLG bay area, in accordance with Airbus AOT 53–11, dated October 13, 1997.

(1) If any cracking is detected, prior to further flight, repair in accordance with the AOT.

(2) If no cracking is detected, no further action is required by this paragraph.

Repetitive Inspections and Corrective Actions

(i) For Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622R, C4–605R Variant F airplanes, and F4–605R airplanes, on which Airbus Modification 12169 has not been done in production: Perform the requirements of paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, in accordance with Airbus Service Bulletin A300–53–6128, dated March 5, 2001.

(1) At the later of the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, perform initial ultrasonic inspections or high frequency eddy current inspections (HFEC) for cracks of the lower flanges of gantries 3, 4, and 5 between fuselage frames FR47 and FR54, in accordance with the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin.

(i) In accordance with the thresholds specified in the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin; or

(ii) Within 200 flight cycles after October 19, 2004 (the effective date AD 2004–18–13).

(2) Perform repetitive ultrasonic inspections or high-frequency eddy current inspections for cracks of the lower flanges of gantries 3, 4, and 5 between fuselage frames FR47 and FR54, in accordance with the thresholds and Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin.

(3) Perform repairs and reinforcements, in accordance with the thresholds and the Accomplishment Instructions, including the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin, except as specified in paragraph (i)(4) of this AD.

(4) If a new crack is found during any action required by paragraph (i)(1), (i)(2), or (i)(3) of this AD and the Synoptic Chart contained in Figure 2, sheets 1 through 5 inclusive, of the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair per a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Credit for Inspections Accomplished in Accordance with AOT

(j) Any inspection accomplished before October 19, 2004, in accordance with Airbus AOT 53–11, dated October 13, 1997, is acceptable for compliance with the corresponding inspection specified in paragraph (i)(1) of this AD, for that inspection area only. Operators must do the applicable inspections in paragraph (i)(1) of this AD for the remaining inspection areas.

New Requirements of This AD

Repetitive Inspections

(k) At the later of the applicable times specified in the "Threshold (FC)" and "Grace Period" columns of Tables 1 and 2 in paragraph 1.E of the applicable service bulletin specified in Table 2 of this AD: Do an ultrasonic inspection or HFEC inspection, including rework of the pressure diaphragm, for cracks in the lower flanges of the left and right gantries 1 through 5 inclusive between FR47 and FR54, in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD. Repeat the inspection at the applicable times specified in the "Interval (FC)" column of Tables 1 and 2 in paragraph 1.E of the applicable service bulletin in Table 2 of this AD. Accomplishment of the initial inspection ends the inspections required by paragraphs (f), (h), and (i) of this AD.

TABLE 2.—SERVICE BULLETINS

Airbus service bulletin—	For airplanes identified in—
(1) A300–53–0379, Revision 01, dated October 4, 2005	Paragraphs (c)(1) and (c)(2) of this AD.
(2) A300–53–6152, Revision 01, dated October 4, 2005	Paragraphs (c)(3) through (c)(6) of this AD inclusive.

Corrective Action

(l) If any crack is detected during any ultrasonic or HFEC inspection required by paragraph (k) of this AD, before further flight, repair the crack in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD, except as provided by paragraph (n) of this AD.

Optional Terminating Actions

(m) Accomplishment of the actions specified in Table 3 of this AD ends the repetitive inspections required by paragraph (k) of this AD.

TABLE 3.—OPTIONAL TERMINATING ACTIONS

Before or at the same time with—	Reinforce—	By doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin—	For airplanes identified in—
(1) The actions required by paragraph (k) of this AD and the action specified in paragraph (m)(2) of this AD.	The flanges of the left and right portals 1 through 5 inclusive between FR47 and FR54 of the landing gear, including a rotating probe inspection for cracks of holes and repair if necessary.	A300–53–0380, dated August 5, 2005, except as provided by paragraph (n) of this AD.	Paragraphs (c)(1) and (c)(2) of this AD.
		A300–53–6153, dated August 24, 2005, except as provided by paragraph (n) of this AD.	Paragraphs (c)(3) through (c)(6) of this AD inclusive.
(2) The actions required by paragraph (k) of this AD.	Portals 3, 4, and 5 of the plates/skin.	A300–53–0360, dated May 3, 2002, except as provided by paragraph (n) of this AD.	Paragraphs (c)(1) and (c)(2) of this AD
		A300–53–6132, dated February 5, 2002, except as provided by paragraph (n) of this AD.	Paragraphs (c)(3) through (c)(6) of this AD inclusive

Repair of Certain Cracks

(n) Where the applicable service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Credit for Original Service Bulletins

(o) Accomplishing the inspections and repair before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–0379, dated May 9, 2005, or Airbus Service Bulletin A300–53–6152, dated May 9, 2005, as applicable, is acceptable for compliance with the corresponding requirements of paragraphs (k) and (l) of this AD.

No Inspection Report

(p) Although the service bulletins in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(r) French airworthiness directive F–2005–091 R1, issued September 28, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7477 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24780; Directorate Identifier 2006–NM–069–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas airplanes, identified above. This proposed AD would require installing or replacing with improved parts, as applicable, the bonding straps between the metallic

frame of the fillet and the wing leading edge ribs, on both the left and right sides. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks in the event of a severe lightning strike, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24780; Directorate Identifier 2006–NM–069–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Engineering review of the extended wing-to-fuselage fillet on certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes revealed an increase in the nonmetallic area of the fillet. Engineering reviews of the conventional wing-to-fuselage fillet on certain of the same airplane models revealed that the support ribs of the fuselage-mounted fillet are not grounded, but should be. These conditions, in combination with a severe lightning strike and flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992 (for airplanes with extended wing-to-fuselage fillets); and McDonnell Douglas DC–10 Service Bulletin 53–111, Revision 3, dated August 24, 1992 (for airplanes with conventional wing-to-fuselage fillets). The service bulletins describe procedures for installing or replacing with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides. For airplanes with extended wing-to-fuselage fillets, the service bulletin indicates that there are

six bonding straps. For airplanes with conventional wing-to-fuselage fillets, the service bulletin indicates that there are ten bonding straps. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Bulletins."

Difference Between the Proposed AD and the Service Bulletins

McDonnell Douglas DC–10 Service Bulletin 53–109 recommends doing the installation or replacement at the earliest practical maintenance period, and McDonnell Douglas DC–10 Service Bulletin 53–111 recommends doing the installation or maintenance at the first convenient check, but no later than 7,500 flight-hours after receiving the service bulletin. We have determined that these intervals would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a compliance time of the earlier of 7,500 flight hours or 60 months after the effective date of this AD represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing, and Boeing concurs.

Costs of Compliance

There are about 457 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 280 airplanes of U.S. registry. The proposed actions would take between 9 and 17 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost between $3,720 and $4,169 per airplane. Based on these figures, the estimated cost of the proposed AD is between $4,440 and $5,529 per airplane, or between $1,243,200 and $1,548,120 for the U.S.-registered fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–24780; Directorate Identifier 2006–NM–069–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, airplanes, certificated in any category; as identified in the applicable service bulletin listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

McDonnell Douglas DC–10 service bulletin	Revision level	Date	For airplanes with—
53–109	4	October 7, 1992	Extended wing-to-fuselage fillets.
53–111	3	August 24, 1992	Conventional wing-to-fuselage fillets.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks in the event of a severe lightning strike, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Installation or Replacement

(f) Within 7,500 flight hours or 60 months after the effective date of this AD, whichever occurs earlier: Install or replace with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on May 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7476 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24787; Directorate Identifier 2006–NM–043–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes; Model DC–10–15 Airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; Model MD–10–10F and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This proposed AD would require fabrication and installation of a wire harness guard in the right wheel well of the main landing gear (MLG), and related investigative and corrective actions as necessary. For certain airplanes, the proposed AD also would require replacement of the electrical connectors of the auxiliary hydraulic pumps with improved electrical connectors and related investigative and corrective actions. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent damage to the wire support bracket and wiring of the auxiliary hydraulic pump and, for certain airplanes, water intrusion through the electrical connectors of the auxiliary hydraulic pump. These conditions could lead to a potential ignition source in the right wheel well of the MLG around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24787; Directorate Identifier 2006–NM–043–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design

Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received two reports indicating that the auxiliary hydraulic pump system failed on McDonnell Douglas Model DC–10–30F airplanes. Failure of the hydraulic pump resulted in several feet of burnt electrical wiring between the auxiliary hydraulic pump motor and the right wheel well of the main landing gear (MLG). Operators also found damage to the adjacent structure, control cables, hydraulic pipes, and hoses. Investigation revealed that electrical arcing between damaged wiring and the adjacent structure caused a short in the pump motor, which led to the failure of the hydraulic pump. The damaged wiring was caused by maintenance personnel stepping on the wiring assembly. Damage to the wire support bracket and wiring, if not corrected, could lead to a potential ignition source in the right wheel well of the MLG around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have also received a third report that the auxiliary hydraulic pump failed on a McDonnell Douglas Model DC–10 airplane. Investigation of the third report revealed that water entered into the auxiliary hydraulic pump through the electrical connectors, causing electrical arcing. The electrical arcing led to the failure of the hydraulic pump. Water intrusion through the electrical connectors of the auxiliary hydraulic pump, if not corrected, could lead to a potential ignition source in the right wheel well of the MLG around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Other Related Rulemaking

On February 26, 2004, we issued AD 2004–05–20, amendment 39–13515 (69 FR 11504, March 11, 2004). That AD is applicable to certain McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. That AD requires modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. We issued that AD to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. The repetitive inspections of that AD ensure that any damage to the wiring of the auxiliary hydraulic pumps can be detected and corrected.

Relevant Service Information

We have reviewed the following service information:

Airplanes	Service bulletin	Dated
McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes.	Boeing Alert Service Bulletin DC10–29A146, Revision 1.	April 6, 2005.
	McDonnell Douglas DC–10 Service Bulletin 29–135.	September 8, 1993.
McDonnell Douglas Model MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–29A060.	April 30, 2001.

Boeing Alert Service Bulletins DC10–29A146 and MD11–29A060 describe procedures for fabricating a wire harness guard and installing it in the right wheel well of the main landing gear (MLG), and doing related investigative and corrective actions. The related investigative actions are a visual inspection of the wiring installations of the auxiliary hydraulic pump in the right main wheel well at station Y = 1381 for chafing; and verification that the area around the wiring of auxiliary hydraulic pump is clean and free of debris. The corrective action is to repair any damaged or chafed wiring.

McDonnell Douglas DC–10 Service Bulletin 29–135 describes procedures for replacing the electrical connectors, having part number (P/N) FC6DE24–10S or DC62E24–10SN, of the auxiliary hydraulic pumps at the right wheel well of the MLG with improved electrical connectors having P/N DC62F24–10SN, and doing a related investigative action. The related investigative action is a test of the auxiliary hydraulic system.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletins."

Differences Between the Proposed AD and Service Bulletins

Boeing Alert Service Bulletins DC10–29A146 and MD11–29A060 describe procedures for verifying that the area around the wiring of auxiliary hydraulic pump is clean and free of debris. However, the service bulletins do not specify what corrective action to take if any debris is found in the area around the wiring of the auxiliary hydraulic pump. This NPRM proposes to require cleaning the area of the debris before further flight.

Although Boeing Alert Service Bulletins DC10–29A146 and MD11–29A060 recommend accomplishing the modification within a compliance time of 18 months, this NPRM would require a compliance time of 60 months. Since issuance of those service bulletins, the manufacturer has reviewed the identified unsafe condition in response to SFAR 88. As a result, the manufacturer recommends extending the compliance time to 60 months because the unsafe condition occurs in an area outside of the fuel tank. Also as stated previously, we issued AD 2004–05–20 that in part requires repetitive inspections of the auxiliary hydraulic pumps at intervals of 2,500 flight hours. AD 2004–05–20 ensures that any damage to the wiring of the auxiliary hydraulic pumps can be detected and corrected. For these reasons, we find that a compliance time of 60 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

This NPRM identifies the correct P/N for a certain rivet that is incorrectly specified in Boeing Alert Service Bulletin MD11–29A060. P/N MS20470AD5–7, shown in the parts and material table in paragraph 2.C.2 of the service bulletin, is not a valid P/N. The correct P/N that must be used is P/N MS20470AD6–7; this P/N is correctly referenced in Figure 2 of the Accomplishment Instructions of the service bulletin. The manufacturer is aware of this discrepancy, concurs with the change, and has issued Information Notice MD11–29A060 IN 01, dated August 15, 2002, to inform operators of the error. We have included this information in paragraph (g) of this NPRM.

McDonnell Douglas DC–10 Service Bulletin 29–135 specifies testing the auxiliary hydraulic system, but does not specify what corrective action to take if the auxiliary hydraulic system fails that test. This NPRM proposes to require, before further flight, repairing the auxiliary hydraulic system according to a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Chapter 29–20–00 of the DC–10 Aircraft Maintenance Manual is one approved method for repairing the auxiliary hydraulic system.

Although McDonnell Douglas DC–10 Service Bulletin 29–135 recommends accomplishing the replacements at the earliest practical maintenance period, we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this NPRM, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacements. In light of all of these factors, we find a compliance time of 60 months for completing the replacements to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the manufacturer.

Clarification of Concurrent Requirements

Boeing Alert Service Bulletin DC10–29A146 recommends accomplishing Boeing Service Bulletins DC10–29A144 and DC10–29A142 concurrently for ease of maintenance and scheduling. Also, Boeing Alert Service Bulletin MD11–29A060 recommends accomplishing Boeing Service Bulletins MD11–29A059 and MD11–29A057 concurrently for ease of maintenance and scheduling. This NPRM, however, would not require operators to accomplish any of these service bulletins concurrently.

Clarification of Inspection Terminology

The "visual inspection" specified in Boeing Alert Service Bulletins DC10–29A146 and MD11–29A060 is referred to as a "general visual inspection" in this NPRM. We have included the definition for a general visual inspection in a note in this NPRM.

Costs of Compliance

There are about 627 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 303 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Models	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes.	Fabrication and Installation	3	$889	$1,129	206	$232,574
	Replacement	2	290	450	206	92,700
MD–11 and MD–11F airplanes	Fabrication and installation	3	866	1,106	97	107,282

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–24787; Directorate Identifier 2006–NM–043–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the McDonnell Douglas airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes; fuselage numbers (FNs) 1 through 446 inclusive.

(2) Model MD–11 and MD–11F airplanes; F/Ns 0447, 0448, 0449, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, and 0554 through 0646 inclusive.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent damage to the wire support bracket and wiring of the auxiliary hydraulic pump and, for certain airplanes, water intrusion through the electrical connectors of the auxiliary hydraulic pump. These conditions could lead to a potential ignition source in the right wheel well of the main landing gear (MLG) around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Installation and Replacement for Certain Airplanes

(f) For Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes: Within 60 months after the effective date of this AD, do the actions specified in paragraph (f)(1) and (f)(2) of this AD.

(1) Fabricate a wire harness guard and install it in the right wheel well of the MLG, and do all related investigative and applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A146, Revision 1, dated April 6, 2005; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. If any debris is found in the area around the wiring of the auxiliary hydraulic pump, before further flight, clean the area of the debris.

(2) Replace any electrical connector having part number (P/N) DC62E24–10SN or FC6DE24–10S of the auxiliary hydraulic pumps at the right wheel well of the MLG with improved electrical connectors having P/N DC62F24–10SN, and do the related investigative action before further flight, by accomplishing all of actions specified in the Accomplishment Instructions of McDonnell Douglas DC–10 Service Bulletin 29–135, dated September 8, 1993. If the auxiliary hydraulic system fails the test, before further flight, repair the auxiliary hydraulic system according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 29–20–00 of the DC–10 Aircraft Maintenance Manual is one approved method.

Installation for Other Certain Airplanes

(g) For Model MD–11 and MD–11F airplanes: Within 60 months after the effective date of this AD, fabricate and install a wire harness guard in the right wheel well of the MLG, and do all related investigative and applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A060, dated April 30, 2001; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. If any debris is found in the area around the wiring of the auxiliary hydraulic pump, before further flight, clean the area of the debris. Rivet P/N MS20470AD5–7, shown in the parts and material table in paragraph 2.C.2 of the service bulletin, is not a valid P/N; the correct P/N that must be used is P/N MS20470AD6–7.

Exception to Service Bulletins

(h) Where Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A146, Revision 1, dated April 6, 2005; and Boeing Alert Service Bulletin MD11–29A060, dated April 30, 2001, specify doing a visual inspection of the wiring installations of the auxiliary hydraulic pump in the right main wheel well at station Y=1381 for chafing, do a general visual inspection.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Credit for Original Issue of Service Bulletin

(i) For Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC10–29A146, dated April 30, 2001,

are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on May 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7475 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24786; Directorate Identifier 2006–NM–087–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This proposed AD would require installing a clamp, a bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent arcing on the in-tank side of the fueling valve during a lightning strike, which could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

DATES: We must receive comments on this proposed AD by July 3, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24786; Directorate Identifier 2006–NM–087–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in

combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that a SFAR 88 review of the fuel system on McDonnell Douglas Model MD–80 airplanes revealed a potential for arcing on the in-tank side of the fueling valve during a lightning strike. The non-conductive coating, which keeps the rigid pipes and valves electrically isolated, may wear off or be scratched. Any wear or scratch in the coating could allow lightning-induced current to flow from the refueling manifold to the airplane structure through the fueling valve and could cause arcing. Arcing on the in-tank side of the fueling valve could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD80–28–213, dated May 16, 2005. The service bulletin describes procedures for installing a clamp, a bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 994 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 573 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $8 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $96,264, or $168 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–24786; Directorate Identifier 2006–NM–087–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category; as identified in Boeing Service Bulletin MD80–28–213, dated May 16, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing on the in-tank side of the fueling valve during a lightning strike, which could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

Compliance

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

Electrical Bond Installation

(f) Within 60 months after the effective date of this AD, install a clamp, a bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area; in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD80–28–213, dated May 16, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on May 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7479 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24788; Directorate Identifier 2006–NM–073–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This proposed AD would require a one-time inspection for proper crimping of the terminal lugs for the power cables of each integrated drive generator (IDG), installing a new sleeve on the terminal, and re-crimping if necessary. This proposed AD results from a report that the terminal lugs for the power cables of the IDGs may not be adequately crimped, which could allow the cables to be pulled out of the terminals with no significant force. We are proposing this AD to prevent loss of all normal electrical power for the airplane, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by June 16, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24788; Directorate Identifier 2006–NM–073–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Departamento de Aviaçãc Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model ERJ 170 airplanes. The DAC advises that during a heavy maintenance action, it was discovered that four terminal lugs for the power cables of the integrated drive generators (IDGs) were not adequately crimped during installation, which could allow the cables to be pulled out of the terminals with no significant force. This condition, if not corrected, could result in loss of all normal electrical power for the airplane, and consequent reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–24–0028, dated January 4, 2006. The service bulletin describes procedures for doing an inspection of the crimping of terminal lugs for the power cables of each IDG, and corrective actions. The corrective actions are installing a new sleeve on the terminal, and re-crimping if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2006–02–04, dated March 15, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Brazilian airworthiness directive is referred to as a "detailed inspection." We have included the definition for a

detailed inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 54 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $4,320, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24788; Directorate Identifier 2006–NM–073–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 170–24–0028, dated January 4, 2006.

Unsafe Condition

(d) This AD results from a report that the terminal lugs for the power cables of the integrated drive generators (IDGs) may not be adequately crimped, which could allow the cables to be pulled out of the terminals with no significant force. We are issuing this AD to prevent the loss of all normal electrical power for the airplane, and consequent reduced controllability of the airplane.

Compliance

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

Inspection and Corrective Actions

(f) Within 600 flight hours after the effective date of this AD: Do a detailed inspection for proper crimping of terminal lugs for the power cables of each IDG, and install a new sleeve on the terminal. If the terminal lugs are not properly installed and crimped: Before further flight, re-crimp and install a new sleeve on the terminal. Do all actions in accordance with the Accomplishment Instructions of EMBREAR Service Bulletin 170–24–0028, dated January 4, 2006.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–02–04, dated March 15, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on May 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–7474 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2001–10881]

RIN 1625–AA36

Drawbridge Operation Regulations; Amendment

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a supplemental change to its notice of proposed rulemaking for modifying drawbridge operating regulations. This proposed supplemental change will consolidate all temporary changes to a drawbridge operating schedule into either a deviation or a rulemaking based on the length of time of the temporary change. This new proposed change is intended to provide more easily understood regulatory requirements. This proposed change will not affect the requirements for emergency closures or permanent changes to an operating schedule.

DATES: Comments and related material must reach the Docket Management Facility on or before July 17, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 17; 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2001–10881 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.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Chris Jaufmann, Office of Bridge Administration, United States Coast Guard Headquarters, 202–267–0368. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Dockets Operations, Department of Transportation, telephone 202–493–0402.

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, USCG–2001–10881, 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 mail, hand delivery, fax, or electronic means 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 hand 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. We may change this supplemental proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the Office of Bridge Administration at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would be helpful, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On April 17, 2003, we published a notice of proposed rulemaking (NPRM) titled "Amendment to Drawbridge Operation Regulations" in the **Federal Register** (68 FR 18922). We received 11 letters commenting on the proposed rule; however none of those comments were the cause for this supplemental proposed rule. Responses to these comments are addressed below. No public meeting was requested and none was held.

Background and Purpose

The last major update to the drawbridge regulations in 33 CFR part 117 was in 1984. The Coast Guard published a NPRM on April 17, 2003 (68 FR 18922) which proposed revising part 117 to provide clearer language and more easily understood regulatory requirements. However, after further review the Coast Guard determined that certain proposed changes and clarifications made the regulatory process more cumbersome.

Currently the Coast Guard has two deviations that allow bridge owners to change operating schedules for 60 days for maintenance and repair needs, and 90 days to test a new operating schedule. In our NPRM, we proposed a third deviation for short term events, and a notice requirement for winter operations in the northern region of the Eighth Coast Guard District and all of the Ninth Coast Guard District.

In order to simplify our bridge program's regulatory process, the Coast Guard is proposing to remove the aforementioned notice and three enumerated deviations, and to consolidate all temporary changes to a drawbridge operating schedule into one of two categories: (1) A deviation, when the temporary change will be for a period of 180 days or less, or; (2) a rulemaking, when the temporary change will be for a period greater then 180 days. This new supplemental proposed rule will amend § 117.35 and remove §§ 117.37, 117.43, and 117.45. This will not affect the bridge owners' responsibility to notify the Coast Guard in a timely manner with their request to change an operating schedule or the discretion of the District Commander to accept the request.

Discussion of Proposed Rule

In this supplemental proposed rule, the Coast Guard proposes to simplify the regulatory process by creating a single deviation for temporary changes to drawbridge operating schedules lasting 180 days or less. This deviation provision would allow the District Commanders the flexibility to maximize waterway use for navigation prior to and during varying weather conditions, repair/maintenance situations, reasons of public health and safety, and public events. Any temporary change of an operating schedule lasting greater then 180 days or any permanent change to an operating schedule will require a full rulemaking under the Administrative Procedure Act.

This supplemental proposed rule will remove the need for separate provisions for winter drawbridge operations in the Ninth Coast Guard District (§ 117.45), the 60 day deviation for repairs (§ 117.35(d)), and the 90 day test deviation (§ 117.43). This proposed rule also removes the need for the proposed deviation for short term public events (§ 117.37) and the proposed winter operating provision for the northern areas of the Eighth Coast Guard District found in § 117.45 of the NPRM. We also propose to add two new definitions which define the terms drawbridge and drawspan. The Coast Guard will make conforming changes to subpart B removing various terms such as Span, Lift, Draw, or any other unnecessary unique designation used to describe the drawbridge or drawspan and replacing them with the appropriate term.

In the NPRM, the Coast Guard also proposed to add six new definitions to the part; to make a substantive revision to the regulation governing the removable span bridge across Lindsey Slough; and to include in subpart A, a specific requirement that bridge owners must cycle the drawspan(s) of their drawbridges periodically to ensure operation of the drawbridge. We also proposed to rewrite and reorganize sections in subpart A, and to make technical and conforming changes in subpart B. This SNPRM will not affect those proposed changes.

Discussion of Comments and Changes

The 11 letters received during the comment period came from state, regional, city, and county transportation offices; a railway association; a railroad company; and two private citizens. For our discussion of these comments, we combined remarks from all comments on each issue, and have addressed the issues, starting with the proposed change that generated the largest number of comments to the proposed change that generated the least.

Change in Drawbridge Operating Schedule for Maintenance

Issue—All 11 comments objected to our proposal to require submission of requests for change to a drawbridge operation schedule 90 days before the start date of the schedule change. The comments focused on difficulties in scheduling maintenance work that far in advance because changes in weather and tidal conditions, contracting issues, and unpredictable occurrences often cause delays in starting or finishing maintenance work on drawbridges. These delays cause changes to the dates for scheduled maintenance requested by the bridge owners.

Response—The proposed change to § 117.35 was intended to clarify the procedures for temporary changes to drawbridge operating schedules. The proposed 90 days reflects the amount of time the Coast Guard may need to review a requested change; obtain any necessary additional information; and to prepare decision letters and publish in the **Federal Register** and other appropriate media, any necessary rulemaking documents related to the change. The full 90-day time period is not needed in every case, nor is it a requirement that precludes processing a request received fewer than 90 days before the needed change. District Commanders have the discretion to process a request even if it is received fewer than 90 days before the needed change. We have revised the language in § 117.35(c)(3) to state that the District Commander has the discretion to authorize a request submitted less than 90 days before the schedule change.

As to unforeseen delays in starting or completing maintenance work, the requested closure period should include a sufficient number of days to accommodate some unanticipated delays in starting or completing the work. The District Commander's authorization to change the operating schedule would then require that if these additional days are not needed, the drawbridge should operate under its normal schedule until the work begins or is returned to its normal schedule immediately after the work is completed.

General Requirements for Drawbridge Owners

Issue—In the NPRM, we proposed to change the § 117.7 requirement to operate a drawbridge at "sufficient intervals" to a more specific requirement to "cycle the drawspans a minimum of once every six months." We also proposed to remove the language "Except for drawbridges not required to open for the passage of vessels."

Two comments on this section stated that, if we removed the exception language from § 117.7, the proposed specific requirement for cycling the drawbridge once every six months would cause "undue burden on the bridge owner."

Response—The Coast Guard agrees that requiring cycling of the drawspans "every six months" may not be necessary. We have changed the proposed text to eliminate the six month requirement and replace it with language that allows the bridge owner to determine the number of times the drawspans needs to be cycled, so long as the number of cycles "ensures operation of the drawbridge." This allows the bridge owner the flexibility to determine how often cycling the drawspan would be appropriate to maintain their drawbridge in operating condition.

The Coast Guard has also decided not to remove the "exception" term from § 117.7. Some drawbridges authorized to remain closed to navigation prior to this proposed rule cannot meet the cycling requirement without incurring costs to bring the drawbridge back to operational condition. Removal of the word "except" would cause an unnecessary reactivation of drawbridges, which had been authorized to remain closed to navigation before an order from the District Commander to return them to operating condition. Therefore, the Coast Guard will only require drawbridges authorized to remain closed after the effective date of the final rule to meet the cycling and maintenance requirements in § 117.7 unless a previously exempted bridge has been restored to operation at which point they will be subject to requirements of this part.

Authorized Closure of a Drawbridge

Issue—Two comments addressed proposed changes to § 117.39. The concerns in these comments are similar to the comments for § 117.7 regarding the cycling of the drawbridge, costs, and necessity of maintaining a drawbridge that has been authorized to remain closed to navigation and unattended. Both comments indicated that the statement "The District Commander may condition approval on the continued maintenance of the operating machinery" should remain in the section.

Response—Based on these comments, we have changed the section heading and rewritten the regulatory text to clarify that these requirements apply to drawbridges that are authorized to remain closed after the effective date of the final rule.

The text in § 117.39(c)(2) allows the District Commander to set out in the approval letter any appropriate conditions including the continued maintenance of the operating machinery. The authorization to remain closed is a regulatory permission that allows the drawbridge to be untended and closed to navigation. The authorization is not a change to the bridge permit, it is a change to the operation requirements for the drawbridge and it is effective until revoked or revised. The authorization does not alter the bridge permit, which requires drawbridges to remain operational, *i.e.* capable of operating. Changes made to a drawbridge that would effectively render it inoperable, for example, removal of operating equipment or alteration of transportation surfaces so the draw cannot open, require a change to the permit. This type of change can only be done with an amendment to the permit, not a regulatory change to the operating schedule.

Closure of Drawbridge for Emergency Repair

Issue—Two comments addressed § 117.36. One comment was concerned that the removal of the phrase "vital, unscheduled repair or maintenance work shall be performed without delay * * *" from § 117.35, and not added to the new § 117.36, would take away the ability of the bridge owner to

immediately close the drawbridge in case of a mechanical or structural failure and would require full rulemaking before closing the drawbridge. The second comment indicated that there was a "fine line" between what constitutes an emergency and an unscheduled repair.

Response—The section heading for § 117.36 states that this section pertains to "Closure of drawbridge for emergency repair." Need for a "vital, unscheduled repair" is an emergency that requires immediate attention for safety. If a drawbridge is unexpectedly inoperable, or should be rendered inoperable because of some mechanical or structural problem, then the drawbridge owner should close the drawbridge and notify the District Commander without delay. The District Commander will issue appropriate notification to inform the public of the situation. In this case, there is no need for rulemaking and § 117.36 does not suggest that.

If the drawbridge can operate safely until needed unscheduled repairs or maintenance is done, then any change to the operating schedule to accommodate the repair work must be approved by the District Commander. In these cases, where the repair or maintenance is necessary, but the drawspan can continue to operate safely, the drawbridge owner must request a temporary change in the operating schedule so the District Commander can provide appropriate notice to the public.

Permanent Changes to Drawbridge Operation

Issue—We received one comment on the proposed new § 117.8. The comment suggested that a time limit of 30 days be placed on the District Commander in responding to a request for a permanent change to a drawbridge-operating schedule.

Response—The Coast Guard does not agree that a specific time limit should be set for the District Commander's response to a request to change a drawbridge operating schedule. Reviewing submitted information and gathering necessary additional information to determine whether a permanent change is needed, as well as reviewing environmental considerations, and reviewing how the balance between the competing needs of land and marine traffic would be affected, may take longer than 30 days.

Temporary Change in Drawbridge Operating Schedule for Local Public Events

Issue—We received one comment on proposed § 117.37. The comment stated that, "The requirement in § 117.37 that advance notice be published in the **Federal Register** adds to the lead time for this type of activity without providing benefit to the river users" and that the Local Notice to Mariners "requires less lead time" and "is much more likely to be consulted by mariners, the impacted user group, than the **Federal Register**." The comment also stated that in both § 117.35 and § 117.37 it appears that a Deviation is more stringent than a Temporary Rule.

Response—At the time the notice of proposed rulemaking was published, it was the Coast Guard's intent to introduce a third deviation for public events. However, after careful consideration, it was determined that combining all three deviations into one helped to streamline the drawbridge regulatory process. We believe the comment may still apply to this change, and address it accordingly. A deviation, authorized in part 117, is an alternative tool to rulemaking under certain conditions. When the requirements set out in § 117.35 are met, the District Commander may issue a deviation, instead of a rule, to authorize a temporary change in a drawbridge operation schedule. While this deviation is not a rule subject to the Administrative Procedure Act, we are still required to publish that rule in the **Federal Register** pursuant to the Freedom of Information Act (5 U.S.C. 552). Publishing it prior to its effective date, while not technically required, is certainly well within the spirit of FOIA, and as such it is the Coast Guard's policy to do so whenever possible. This does not prevent a District Commander from also publishing Notices of Deviation in local notices to mariners, or by any other means available.

Deviation for Testing Drawbridge Operation Changes

Issue—We received one comment on proposed § 117.43. The comment objects to allowing the public to request testing a change to a drawbridge operating schedule.

Response—As local conditions change, such as vehicle and waterway traffic, a drawbridge operating schedule may no longer meet local needs. 33 CFR 1.05–20, states that "any member of the public may petition the Coast Guard to undertake a rulemaking action." Once the request and all pertinent information have been reviewed, the District Commander will determine if the requested change is appropriate. Under the supplemental proposed rule, the specific deviation for testing a rule will be removed and the action of testing a new operating schedule will fall under the new proposed deviation for any modification to an operating schedule. This change will not affect the ability of the public to request a change to an operating schedule.

Other Changes

In § 117.35 we are changing the number of days it normally takes a District Commander to respond to a request for a temporary change to an operating schedule from five working days to ten working days. Due to workload issues five working days is often an insufficient amount of time to gather additional necessary information and coordinate with affected waterway users before responding to a request.

The NPRM proposed a number of minor edits to specific sections in subpart B. However, since the publication of the NPRM, some districts have changed or proposed to change these sections and the proposed changes in our NPRM are no longer needed. Therefore these sections have been removed from this final rule.

The Coast Guard has revised the text in § 117.8(a) and (b) to clarify that anyone, not just the bridge owner, may request a change to the operating schedule of a drawbridge.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. There will be no cost to the general public. This proposal is to provide a more user-friendly part 117 that will remove redundancies and regulations that are no longer functional, make corrections and amendments, and provide clearer language for the user.

The new proposed deviation would not have a significant effect on the economy. These requests for deviations will be reviewed by the District Commander or his/her delegee, taking waterway users and traffic into consideration.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we considered whether this proposed rulemaking 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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Under the provisions of 33 U.S.C. 499, the Secretary of Homeland Security is mandated to prescribe rules and regulations for governing the operation of drawbridges. This authorization was delegated to the Commandant of the Coast Guard under Department of Homeland Security Delegation number 0170.1 and the drawbridge operating regulations are set out in 33 CFR part 117. To change any regulation, 5 U.S.C. 553 requires rulemaking to be published in the **Federal Register** and that the notice shall include a statement of time, place, and nature of public rulemaking proceedings. The information collected for the rule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR 117.8, 117.35, 117.36, 117.39, 117.40, and 117.42.

Need for Information: To change any regulation, 5 U.S.C. 553 requires rulemaking to be published in the **Federal Register**. The information needed to change a drawbridge operating schedule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR part 33 CFR 117.8, 117.35, 117.36, 117.39, 117.40, and 117.42.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information and OMB has approved the collection. The part number is 117 of title 33 and the corresponding approval number from OMB is OMB Control Number 1625–0109 which expires on 30 September 2008. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule would not have implications for Federalism under that Order.

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 proposed rule is not economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this 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 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, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction from further environmental documentation. Promulgation of changes to drawbridge regulations has been found to not have significant effects on the human environment. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" 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 set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. Revise the authority citation for part 117 to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.1 to read as follows:

§ 117.1 Purpose.

(a) This part prescribes the general and special drawbridge operating regulations that apply to the drawbridges across the navigable waters of the United States and its territories. The authority to regulate drawbridges across the navigable waters of the United States is vested in the Secretary of Homeland Security.

(b) Subpart A of this part contains the general operation requirements that apply to all drawbridges.

(c) Subpart B of this part contains specific requirements for operation of individual drawbridges. These requirements are in addition to or vary from the general requirements in subpart A. Specific sections in subpart B, which vary from a general requirement in subpart A, supersede the general requirement. All other general requirements in subpart A, that are not at variance, apply to the drawbridges and removable span bridges listed in subpart B.

§ 117.3 [Removed]

3. Remove § 117.3.

4. Revise § 117.4 to read as follows:

§ 117.4 Definitions.

The following definitions apply to this part:

Appurtenance means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel's piloting, propelling, controlling, or collision avoidance capabilities.

Automated drawbridge means a drawbridge that is operated by an automated mechanism, not a drawtender. An automated drawbridge is normally kept in the open to navigation position and closes when the mechanism is activated.

Deviation means a District Commander's action authorizing a drawbridge owner to temporarily not comply with the drawbridge opening requirements in this part.

District Commander means the Commander of the Coast Guard District in which the drawbridge is located.

Drawbridge means a bridge with an operational span that is intended to be opened for the passage of waterway traffic.

Drawspan means the operational span of a drawbridge.

Lowerable means the non-structural vessel appurtenance can be mechanically or manually lowered and raised again. The term *lowerable* also applies to a nonstructural vessel appurtenance, which can be modified to make the item flexible, hinged, collapsible, or telescopic so that it can be mechanically or manually lowered and raised again.

Nonstructural means that the item is not rigidly fixed to the vessel and could be relocated or altered.

Not essential to navigation means that a nonstructural vessel appurtenance, when in the lowered position, would not adversely affect the vessel's piloting, propulsion, control, or collision-avoidance capabilities.

Public vessel means a vessel that is owned and operated by the United States Government and is not engaged in commercial service, as defined in 46 U.S.C. 2101.

Remotely operated drawbridge means a drawbridge that is operated by remote control from a location away from the drawbridge.

Removable span bridge means a bridge that requires the complete removal of a span by means other than machinery installed on the bridge to open the bridge to navigation.

Untended means that there is no tender at the drawbridge.

5. Revise § 117.5 to read as follows:

§ 117.5 When the drawbridge must open.

Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart.

6. Revise § 117.7 to read as follows:

§ 117.7 General requirements of drawbridge owners.

Except for drawbridges that have been authorized, before [effective date of final rule], to remain closed to navigation or otherwise specified in subpart B of this part, drawbridge owners must:

(a) Provide the necessary drawtender(s) for the safe and prompt opening of the drawbridge.

(b) Maintain the working machinery of the drawbridge in good operating condition.

(c) Cycle the drawspan(s) periodically to ensure operation of the drawbridge.

(d) Ensure that the drawbridge operates in accordance with the requirements of this part.

(e) Any drawbridge allowed to remain closed to navigation prior to [effective date of final rule], when necessary, must be returned to operable condition within the designated time set forth by the District Commander and will become subject to the requirements of this part.

7. Add § 117.8 to read as follows:

§ 117.8 Permanent changes to drawbridge operation.

(a) To request a permanent change to a drawbridge operation requirement in this part, anyone may submit a written request, together with documentation supporting or justifying the requested change, to the District Commander.

(b) If after evaluating the request, the District Commander determines that the requested change is not needed, he or she will respond to the request in writing and provide the reasons for denial of the requested change.

(c) If the District Commander decides that a change may be needed, he or she will begin a rulemaking to implement the change.

8. In § 117.31 revise the section heading and paragraph (a) to read as follows:

§ 117.31 Drawbridge operations for emergency vehicles and emergency vessels.

(a) A drawtender, who receives notification that an emergency vehicle is responding to an emergency situation, must make all reasonable efforts to have the drawspan closed at the time the emergency vehicle arrives.

* * * * *

9. Revise § 117.35 to read as follows:

§ 117.35 Temporary change to a drawbridge operating schedule.

(a) For any temporary change to the operating schedule of a drawbridge,

lasting less than or equal to 180 days, the District Commander may issue a deviation approval letter to the bridge owner and publish a "Notice of deviation from drawbridge regulation" in the **Federal Register**.

(b) If the time period for a temporary change to the operating schedule of a drawbridge will be greater than 180 days, the District Commander will follow appropriate rulemaking procedures and publish a temporary rule in the **Federal Register** prior to the start of the action.

(c) *Request for change.* (1) To temporarily change the drawbridge-operating requirements the bridge owner must submit a written request to the District Commander for approval of the change.

(2) The request must describe the reason for the closure and the dates and times scheduled for the start and end of the change.

(3) Requests should be submitted as early as possible, preferably 90 days before the start of the action. District Commanders have discretion to accept requests submitted less than 90 days before a needed change if those requests can be processed before the date of the needed change.

(d) *Determination.* The District Commander's determination to allow the schedule change is normally forwarded to the bridge owner within ten working days after receipt of the request. If the request is denied, the reasons for the denial will be set out in the District Commander's decision letter.

(e) The drawbridge will return to its regular operating schedule immediately at the end of the designated time period.

(f) If the authorized closure period for an event is broken into separate time periods on the same day or on consecutive days, the drawbridge must provide normal openings for navigation between the authorized closures.

(g) The District Commander will also announce the change to the operating schedule in the Local Notice to Mariners and other appropriate local media.

10. Add § 117.36 to read as follows:

§ 117.36 Closure of drawbridge for emergency repair.

(a) When a drawbridge unexpectedly becomes inoperable, or should be immediately rendered inoperable because of mechanical failure or structural defect, the drawbridge owner must notify the District Commander of the closure without delay and give the reason for the emergency closure of the drawbridge and an estimated time when the drawbridge will return to operating condition.

(b) The District Commander will notify mariners about the drawbridge status through Broadcast Notices to Mariners, Local Notice to Mariners and any other appropriate local media.

(c) Repair work under this section must be performed with all due speed in order to return the drawbridge to operation as soon as possible.

11. Revise § 117.39 to read as follows:

§ 117.39 Authorized closure of drawbridge due to infrequent requests for openings.

(a) When there have been no requests for drawbridge openings for at least two years, a bridge owner may request that the District Commander authorize the drawbridge to remain closed to navigation and to be untended.

(b) Requests to remain closed to navigation, under this section, must be submitted in writing to the District Commander for approval.

(c) The District Commander may:

(1) Authorize the closure of the drawbridge;

(2) Set out any conditions in addition to the requirement in paragraph (d) of this section; and

(3) Revoke an authorization and order the drawbridge returned to operation when necessary.

(d) All drawbridges authorized to remain closed to navigation, under this section, must be maintained in operable condition.

(e) Authorization under this section does not:

(1) Authorize physical changes to the drawbridge structure, or

(2) Authorize removal of the operating machinery.

(f) Drawbridges authorized under this section to remain closed to navigation and to be untended will be identified in subpart B of this part.

12. Add § 117.40 to read as follows:

§ 117.40 Advance notice for drawbridge opening.

(a) Upon written request by the owner of a drawbridge, the District Commander may authorize a drawbridge to operate under an advance notice for opening. The drawbridge tender, after receiving the advance notice must open the drawbridge at the requested time and allow for a reasonable delay in arrival of the vessel giving the advance notice.

(b) If the request is approved, a description of the advanced notice for the drawbridge will be added to subpart B of this part.

13. Revise § 117.41 to read as follows:

§ 117.41 Maintaining drawbridges in the fully open position.

(a) Drawbridges permanently maintained in the fully open to navigation position may discontinue drawtender service as long as the drawbridge remains fully open to navigation. The drawbridge must remain in the fully open position until drawtender service is restored.

(b) If a drawbridge is normally maintained in the fully open to navigation position, but closes to navigation for the passage of pedestrian, vehicular, rail, or other traffic, the drawbridge must be tended unless:

(1) Special operating requirements are established in subpart B of this part for that drawbridge;

(2) Or, the drawbridge is remotely operated or automated.

14. Add § 117.42 to read as follows:

§ 117.42 Remotely operated and automated drawbridges.

(a) Upon written request by the owner of a drawbridge, the District Commander may authorize a drawbridge to operate under an automated system or from a remote location.

(b) If the request is approved, a description of the full operation of the remotely operated or automated drawbridge will be added to subpart B of this part.

Subpart B—Specific Requirements

15. Revise § 117.51 to read as follows:

§ 117.51 General.

The drawbridges in this subpart are listed by the state in which they are located and by the waterway they cross. Waterways are arranged alphabetically by state. The drawbridges listed under a waterway are generally arranged in order from the mouth of the waterway moving upstream. The drawbridges on the Atlantic Intracoastal Waterway are listed from north to south and on the Gulf Intracoastal Waterway from east to west.

§ 117.53 [Removed]

16. Remove § 117.53.

17. In § 117.55 revise paragraph (a) to read as follows:

§ 117.55 Posting of requirements.

(a) The owner of each drawbridge under this subpart, other than removable span bridges, must ensure that a sign summarizing the requirements in this subpart applicable to the drawbridge is posted both upstream and downstream of the drawbridge. The requirements to be posted need not include those in subpart A or §§ 117.51 through 117.59 of this part.

* * * * *

§ 117.57 [Removed]

18. Remove § 117.57.

19. Revise § 117.145 to read as follows:

§ 117.145 Burns Cutoff.

The drawspan for the Daggett Road Drawbridge, mile 3.0 at Stockton, must open on signal if at least 48 hours notice is given to the Port of Stockton.

20. Revise § 117.155 to read as follows:

§ 117.155 Eureka Slough.

The drawspan for the Northwestern Pacific Railroad Authority Drawbridge, mile 0.3 at Eureka, need not be opened for the passage of vessels. The owner or agency controlling the drawbridge must restore the drawspan to full operation within six months of notification from the District Commander.

21. Revise § 117.165 to read as follows:

§ 117.165 Lindsey Slough.

The center drawspan of the Hastings Farms Highway Bridge, mile 2.0 between Egbert and Lower Hastings Tracts, must be removed for the passage of vessels if at least 72 hours notice is given to the Hastings Island Land Company office at Rio Vista.

§ 117.181 [Amended]

22. In § 117.181 remove the last sentence of the section.

§ 117.187 [Amended]

23. In § 117.187 remove the last sentence in paragraph (b).

24. Revise § 117.193 to read as follows:

§ 117.193 San Leandro Bay.

The drawspans of the California Department of Transportation Highway and Bicycle drawbridges, mile 0.0 and mile 0.1, between Alameda and Bay Farm Island, must open on signal; except that, from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m., the drawspans must open on signal if at least 12 hours notice is given. Notice must be given to the drawtender of the Bay Farm Island drawbridges from 8 a.m. to 5 p.m. and to the drawtender of the Park Street Drawbridge at Alameda at all other times. The drawspans need not be opened for the passage of vessels from 9 p.m. to 5 a.m.

§ 117.195 [Amended]

25. In § 117.195 remove the last sentence in this section.

26. In § 117.219 revise paragraph (a) to read as follows:

§ 117.219 Pequonnock River.

(a) Public vessels of the United States must be passed through as soon as possible.

* * * * *

27. In § 117.221 revise paragraph (a) to read as follows:

§ 117.221 Saugatuck River.

(a) Public vessels of the United States must be passed through as soon as possible.

* * * * *

28. In § 117.224 revise paragraph (a) to read as follows:

§ 117.224 Thames River.

* * * * *

(a) Immediately on signal for public vessels of the United States and commercial vessels; except, when a train scheduled to cross the drawbridge, without stopping, has passed the Midway, Groton, or New London stations and is in motion toward the drawbridge, the drawspan must not be opened for the passage of any vessel until the train has crossed the drawbridge; and

* * * * *

29. Revise § 117.225 to read as follows:

§ 117.225 Yellow Mill Channel.

The drawspan of the Stratford Avenue Bridge, mile 0.3 at Bridgeport, must open on signal if at least 24-hours notice is given. Public vessels of the United States must pass through as soon as possible.

30. In § 117.255 add paragraph (c) to read as follows:

§ 117.255 Potomac River.

* * * * *

(c) This section is also issued under the authority of Public Law 102–587, 106 Stat. 5039.

31. In § 117.261 revise paragraph (a) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

(a) General. Public vessels of the United States and tugs with tows must be passed through the drawspan of each drawbridge listed in this section at anytime.

* * * * *

32. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The east drawspan of the Venetian Causeway Drawbridge, between Miami and Miami Beach, must open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the drawspan must open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The drawspan must open on-signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The drawspan must open at anytime for public vessels of the United States and tugs with tows.

§ 117.271 [Amended]

33. In § 117.271 remove paragraph (b) and remove the paragraph designator from paragraph (a).

34. Revise § 117.273 to read as follows:

§ 117.273 Canaveral Barge Canal.

(a) The drawspan of the Christa McAuliffe Drawbridge, SR 3, mile 1.0, across the Canaveral Barge Canal need only open daily for vessel traffic on the hour and half-hour from 6 a.m. to 10 p.m.; except that from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the drawspan need not open. From 10:01 p.m. to 5:59 a.m., everyday, the drawspan must open on signal if at least 3 hours notice is given to the drawtender. The drawspan must open as soon as possible for the passage of public vessels of the United States and tugs with tows.

(b) The drawspan of the SR401 Drawbridge, mile 5.5 at Port Canaveral, must open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawspan need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the drawspan must open on signal if at least three hours notice is given. The drawspan must open as soon as possible for the passage of pubic vessels of the United States and tugs with tows.

§ 117.277 [Removed]

35. Remove § 117.277.

36.In § 117.287 revise paragraph (a) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

(a) Public vessels of the United States and tugs with tows must be passed through the drawspan of each drawbridge listed in this section at anytime.

* * * * *

37. Revise § 117.289 to read as follows:

§ 117.289 Hillsboro Inlet.

The drawspans of the SR A–1–A Drawbridge, mile 0.3 at Hillsboro Beach, must open on signal; except that, from 7 a.m. to 6 p.m., the drawspans need be

opened only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States and tugs with tows must be passed at anytime.

38. In § 117.291 revise paragraph (a) to read as follows:

§ 117.291 Hillsborough River.

(a) The drawspans for the drawbridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, must open on signal if at least two hours notice is given; except that, the drawspan must open on signal as soon as possible for public vessels of the United States.

* * * * *

39. Revise § 117.311 to read as follows:

§ 117.311 New Pass.

The drawspan for the State Road 789 Drawbridge, mile 0.05, at Sarasota, need only open on the hour, twenty minutes past the hour, and forty minutes past the hour from 7 a.m. to 6 p.m. From 6 p.m. to 7 a.m., the drawspan must open on signal if at least 3 hours notice is given to the drawtender. Public vessels of the United States and tugs with tows must be passed at anytime.

40. In § 117.313 revise paragraph (a) to read as follows:

§ 117.313 New River.

(a) The drawspan for the S.E. Third Avenue Drawbridge, mile 1.4 at Fort Lauderdale, must open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, excluding Saturday, Sunday, and all federal, state, and local holidays, the drawspan need not be opened for the passage of vessels. Public vessels of the United States and tugs with tows must be passed at anytime.

* * * * *

41. Revise § 117.315 to read as follows:

§ 117.315 New River, South Fork.

(a) The drawspan for the Southwest 12th Street Drawbridge, mile 0.9 at Fort Lauderdale, must open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, excluding Saturday, Sunday, and federal, state, and local holidays, the drawspan need not be opened for the passage of vessels. Public vessels of the United States and tugs with tows must be passed through the draw as soon as possible.

(b) The drawspan for the SR84 Drawbridge, mile 4.4 at Fort Lauderdale, must open on signal if at least 24 hours notice is given. Public vessels of the United States and tugs with tows must be passed through the draw as soon as possible.

42. In § 117.317 revise paragraph (a) to read as follows:

§ 117.317 Okeechobee Waterway.

(a) *Exempt vessels.* This term means public vessels of the United States and tugs with tows.

* * * * *

43. In § 117.325 revise paragraph (a) to read as follows:

§ 117.325 St. Johns River.

(a) The drawspan for the Main Street (US17) drawbridge, mile 24.7, at Jacksonville, must open on signal except that, from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Saturday except Federal holidays, the drawspan need not be opened for the passage of vessels.

* * * * *

44. In § 117.353 revise paragraph (a) to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) *General.* Public vessels of the United States and tugs with tows must, upon proper signal, be passed through the drawspan of each drawbridge in this section at anytime.

* * * * *

§§ 117.486 through 117.488 [Redesignated]

45. Redesignate §§ 117.486 through 117.488 as follows:

Old section	New section
117.486	117.487
117.487	117.488
117.488	117.486

46. In § 117.531 revise paragraph (a)(1) to read as follows:

§ 117.531 Piscataqua River.

(a) * * *

(1) Public vessels of the United States, commercial vessels over 100 gross tons, inbound ferry service vessels and inbound commercial fishing vessels must be passed through the drawspan of each drawbridge as soon as possible. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

* * * * *

§ 117.535 [Removed]

47. Remove § 117.535.

48. In § 117.571 revise paragraph (d) to read as follows:

§ 117.571 Spa Creek.

* * * * *

(d) The drawspan must always open on signal for public vessels of the United States.

49. In § 117.573 revise paragraph (c) to read as follows:

§ 117.573 Stoney Creek.

* * * * *

(c) Public vessels of the United States must be passed as soon as possible.

50. In § 117.588 revise paragraphs (a) and (c) to read as follows:

§ 117.588 Bass River.

* * * * *

(a) Public vessels of the United States must be passed as soon as possible.

* * * * *

(c) That the drawspan for the Hall Whitaker Drawbridge must open on signal if at least 24 hours notice is given.

51. In § 117.605 revise paragraph (c) to read as follows:

§ 117.605 Merrimack River.

* * * * *

(c) The drawspans for the Massachusetts Department of Public Works drawbridges, mile 5.8 at Newburyport and mile 12.6 at Rock Village, and Groveland Drawbridge, mile 16.5 at Groveland, must open on signal if at least two hours notice is given. Public vessels of the United States must be passed through the drawspans as soon as possible.

52. In § 117.620 revise paragraphs (a) and (c) to read as follows:

§ 117.620 Westport River—East Branch.

(a) Public vessels of the United States must be passed as soon as possible.

* * * * *

(c) That the drawspan for the Westport Point Drawbridge, mile 1.2 at Westport, must open on signal if at least 24 hours notice is given.

53. Revise § 117.683 to read as follows:

§ 117.683 Pearl River.

See § 117.486, Pearl River, listed under Louisiana.

54. In § 117.703 revise paragraph (a) to read as follows:

§ 117.703 Bass River.

* * * * *

(a) The drawspan must open on signal if at least six hours notice is given, except that public vessels of the United States must be passed as soon as possible.

* * * * *

55. In § 117.713 revise paragraph (a) to read as follows:

§ 117.713 Cooper River.

(a) The drawspans for the State Street Drawbridge, mile 0.3 and the Conrail

Drawbridge at North River Avenue, mile 0.9, must open on signal if at least four hours notice is given.

* * * * *

§ 117.731 [Redesignated as § 117.730]

56. Redesignate § 117.731 as § 117.730.

§ 117.731a [Redesignate as § 117.731 and Amend]

57. Redesignate § 117.731a as § 117.731 and in newly redesignated § 117.731, revise paragraph (c) to read as follows:

§ 117.731 Mullica River.

* * * * *

(c) The drawspan must open as soon as possible for public vessels of the United States during the periods when four hours notice is required.

§ 117.733 [Amended]

58. In § 117.733 remove paragraph (a) and redesignate paragraphs (b) through (j) as paragraphs (a) through (i) respectively.

59. Revise § 117.736 to read as follows:

§ 117.736 Oceanport Creek.

The drawspan for the New Jersey Transit Rail Operations Drawbridge, mile 8.4 near Oceanport, must open on signal from May 15 through September 15 between 5 a.m. and 9 p.m.; except that, the drawspan need not open 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m on weekdays, excluding all federal holidays except for Martin Luther King Day. The drawspan must open on signal upon four hours notice from May 15 through September 15 between 9 p.m. and 5 a.m., and from September 16 through May 14; except that, the drawspan need not be opened from 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays, excluding all Federal holidays except for Martin Luther King Day. Public vessels of the United States must be passed as soon as possible at anytime.

60. In § 117.738 revise paragraph (a)(2) to read as follows:

§ 117.738 Overpeck Creek.

(a) * * *

(2) Public vessels of the United States must be passed through the drawspan of each drawbridge as soon as possible.

* * * * *

§ 117.739 [Amended]

61. In § 117.739 remove paragraphs (o) and (p)(2); redesignate paragraph (p)(3) as (p)(2) and redesignate paragraphs (p) through (u) as paragraphs (o) through (t) respectively.

62. In § 117.745 revise paragraphs (a)(1) and (b), introductory text, to read as follows:

§ 117.745 Rancocas River (Creek).

(a) * * *

(1) Public vessels of the United States must be passed through the drawspan of each drawbridge as soon as possible without delay at anytime. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

* * * * *

(b) The drawspan for the SR#543 Drawbridge, mile 1.3 at Riverside and the SR#38 Drawbridge, mile 7.8 at Centerton, must operate as follows:

* * * * *

§ 117.775 [Removed]

63. Remove § 117.775.

§ 117.783 [Removed]

64. Remove § 117.783.

65. In § 117.789, revise paragraph (a) to read as follows:

§ 117.789 Harlem River.

(a) The drawspan of each drawbridge across the Harlem River, except the Spuyten Duyvil Railroad Drawbridge, need not be opened from 5 p.m. to 10 a.m. However, at all times, public vessels of the United States must be passed through the drawspan of each drawbridge, listed in this section, as soon as possible.

* * * * *

66. In § 117.791 remove paragraph (a)(3); redesignate paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4), respectively, and revise paragraph (f)(4) to read as follows:

§ 117.791 Hudson River.

* * * * *

(f) * * *

(4) During the period that the Federal Lock at Troy is inoperative, the drawspans need not be opened for the passage of vessels.

§ 117.795 [Amended]

67. In § 117.795, remove paragraph (c).

68. In § 117.797 revise paragraph (a) to read as follows:

§ 117.797 Lake Champlain.

(a) The drawspan for each drawbridge listed in this section must open as soon as possible for public vessels of the United States.

* * * * *

69. In § 117.799 revise paragraph (a) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

(a) At all times, public vessels of the United States, state must be passed through the drawspan of each drawbridge listed in this section as soon as possible.

* * * * *

§ 117.821 [Amended]

70. In § 117.821 remove paragraph (a)(1) and redesignate (a)(2) through (a)(6) as (a)(1) through (a)(5) respectively.

71. In § 117.824 revise paragraph (a)(3) to read as follows:

§ 117.824 Neuse River.

(a) * * *

(3) Must always open on signal for public vessels of the United States.

* * * * *

72. In § 117.843 revise paragraph (a)(3) to read as follows:

§ 117.843 Trent River.

(a) * * *

(3) Must always open on signal for public vessels of the United States.

* * * * *

§ 117.867 [Removed]

73. Remove § 117.867.

§ 117.881 [Amended]

74. In § 117.881 remove paragraph (b) and paragraph designator (a) from the remaining text.

§ 117.885 [Removed]

75. Remove § 117.885.

§ 117.891 [Removed]

76. Remove § 117.891.

77. Revise § 117.892 to read as follows:

§ 117.892 South Slough.

The drawspan for the Oregon State Highway Drawbridge across South Slough at Charleston must open on signal for the passage of vessels, except that between the hours of 7 a.m. and 7 p.m., from June 1 through September 30, the drawspan need be opened only on the hour and half-hour. This exception must not apply to commercial tugs and/or tows or public vessels of the United States.

78. In § 117.911 revise paragraph (a) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *General.* Public vessels of the United States and tugs with tows, upon proper signal, will be passed through the drawspan of each drawbridge listed in this section at anytime.

* * * * *

§ 117.949 [Amended]

79. In § 117.949 remove the last sentence of the section.

80. Revise § 117.968 to read as follows:

§ 117.968 Gulf Intracoastal Waterway.

The drawspan for the Port Isabel Drawbridge, mile 666.0, must open on signal; except that, from 5 a.m. to 8 p.m. on weekdays only, excluding Federal, state, and local holidays, the drawspan need open only on the hour for pleasure craft. The drawspan must open on signal at anytime for commercial vessels. When the drawspan is open for a commercial vessel, waiting pleasure craft must be passed.

81. Revise § 117.977 to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The drawspan for the Pelican Island Causeway Drawbridge across Galveston Channel, mile 4.5 of the Galveston Channel, (GIWW mile 356.1) at Galveston, Texas, must open on signal; except that, from 6:40 a.m. to 8:10 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawspan need not be opened for passage of vessels. Public vessels of the United States must be passed at anytime.

82. In § 117.993 revise paragraph (a) to read as follows:

§ 117.993 Lake Champlain.

(a) The drawspan for each of the drawbridges listed in this section must open as soon as possible for the passage of public vessels of the United States.

* * * * *

83. In § 117.1023 revise paragraph (b) to read as follows:

§ 117.1023 Pamunkey River.

* * * * *

(b) Public vessels of the United States must pass at anytime.

§ 117.1039 [Removed]

84. Remove § 117.1039.

Appendix A to Part 117 [Removed]

85. Remove Appendix A To part 117.

Dated: May 5, 2006.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

[FR Doc. 06–4631 Filed 5–16–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0178; FRL–8171–2]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 11, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing. The promulgated rule applies to the manufacture of coatings, such as paints, inks, and adhesives. The proposed amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending; not reaction or separation processes used in chemical manufacturing.

The proposed amendments also clarify the compliance date for certain equipment that is part of a chemical manufacturing process unit that is also used to produce a coating.

DATES: *Comments.* Comments must be received on or before July 3, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 30, 2006, a public hearing will be held on June 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0178, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: Air and Radiation Docket, EPA, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20004. 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–OAR–2003–0178. 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 with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 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 EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Coatings and Chemicals Group (E143–01), Sector

Policies and Programs Division, EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5402; fax number: (919) 541–3470; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS Code*	Examples of regulated entities
Industry	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of the rule, as well as in today's amendment to the definitions sections. If you have questions regarding the applicability of the amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information 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 on 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.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Randy McDonald, Coatings and Chemicals Group, Sector Policies and Programs Division (E143–01), EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–5402, e-mail address: *mcdonald.randy@epa.gov,* at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Mr. Randy McDonald to verify the time, date, and location of the hearing. A public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule 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 provides information and technology exchange in various areas of air pollution control.

Organization of this Document. The information presented in this preamble is organized as follows:

I. Why are we proposing amendments to 40 CFR part 63, subpart HHHHH?

On December 11, 2003, we promulgated NESHAP for miscellaneous coating manufacturing as subpart HHHHH of 40 CFR part 63 (68 FR 69164). Subpart HHHHH applies to the facilitywide collection of equipment used to manufacture coatings. The term "coating" is defined as any material such as paint, ink, or adhesive that is intended to be applied to a substrate. A "coating" consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, these materials are described by the North American Industry Classification System (NAICS) codes 3255 and 3259.

In the preamble to the final subpart HHHHH rule, in response to a comment that the definition of coating is too expansive, we discussed how to determine whether subpart HHHHH or 40 CFR part 63, subpart FFFF, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, applies. We stated:

> If the product being manufactured is a coating, and the manufacturing steps involve blending, mixing, diluting, and related formulation operations, without an intended reaction, then the process is subject to subpart HHHHH. If a reaction as well as various other operations is involved, then the process typically is subject to subpart FFFF. However, if the downstream formulation operations are distinct from the preceding synthesis process(es), (perhaps because the synthesized product is isolated and some of it is sold or transferred offsite), then the formulation operations are subject to subpart HHHHH, and the synthesis operations are subject to subpart FFFF. In the event that equipment used for manufacturing products in processes that are subject to subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

On May 13, 2005 (70 FR 25678), EPA clarified how to determine whether subpart FFFF or subpart HHHHH applies when equipment is used to produce both subpart FFFF and HHHHH products. We stated:

> Pursuant to subpart FFFF, the primary use of nondedicated multipurpose equipment only dictates which regulation governs where a process unit group (PUG) has been developed under 40 CFR part 63, subpart FFFF, § 63.2535(l), and the primary product is a subpart FFFF, a subpart GGG, or a subpart MMM product. Where one of these products is the primary product, the primary product determines which regulation applies to each miscellaneous organic chemical process unit (MCPU). Where a subpart FFFF product is the primary product of the PUG, subpart FFFF may be complied with for all process units in the PUG in lieu of other 40 CFR part 63 rules.
>
> Where the primary product of the PUG is subject to regulation under any 40 CFR part 63 regulation, other than subpart FFFF, MMM, or GGG, then § 63.2535(l)(3)(ii)(C) dictates that subpart FFFF applies to "each MCPU in the PUG." Otherwise, the regulation applicable to the other product (this would be the primary product if there are only two products) applies to the PUG. Accordingly, if a PUG has been developed, any process unit that is used to produce both a subpart FFFF and subpart HHHHH product must comply with subpart FFFF for the MCPU. Where a PUG has not been developed, the product of the process

generally determines applicability, not primary use.

Because the definition of coating at 40 CFR 63.8105 in subpart HHHHH does not specify that coatings are produced only by blending, mixing, diluting, and related formulation operations, without chemical synthesis or separation, some products of synthetic organic chemical manufacturing could be considered coatings. This overly broad definition of "coating" expands the applicability of subpart HHHHH to equipment intended to be covered by subpart FFFF. We are proposing to revise the definition of coating such that the applicability of the final rule accurately and appropriately reflects the coating manufacturing industry and the basis for the maximum achievable control technology (MACT) floor.

Separately, the recent extension of the compliance date for subpart FFFF (see 71 FR 10439) raises a timing issue with respect to subpart FFFF and subpart HHHHH overlap. The extension for the compliance date for subpart FFFF results in the compliance date for subpart HHHHH occurring before the Miscellaneous Organic Chemical Manufacturing NESHAP compliance date, thus creating a problem for plants with equipment subject to both subparts FFFF and HHHHH who opt to develop a process unit group (PUG). A PUG may be established and developed under subpart FFFF for a process unit that is used to produce both a subpart FFFF and subpart HHHHH product. If the primary product is subject to subpart FFFF, then the plant may comply with subpart FFFF, and not also HHHHH, for all process units in the PUG according to 40 CFR 63.2535(l)(3)(i). In the preamble to the final subpart FFFF rule, in response to a comment that the proposed rule did not go far enough to prevent multipurpose equipment from being subject to more than one MACT standard, we discuss the basis of the PUG. We stated:

> We recognize that 40 CFR part 63, subpart FFFF, will affect manufacturers of specialty chemicals and other products whose multipurpose production processes are subject to other MACT standards, creating situations where there are overlapping requirements. The challenge is how to consolidate overlapping requirements and still maintain the MACT reductions anticipated from each of the various standards. Many MACT standards that regulate specialty chemicals, pesticide active ingredients (PAI), SOCMI, and polymers and resins have specific language relating to overlap. The predominant method of addressing possible overlap is by designating a primary product and requiring compliance with the final rule that applies to the primary product at all times when the flexible process unit is operating. The presumption is that the equipment should be regulated according to the standard that effectively applies for a majority of products produced.
>
> After considering the provisions in previous rules, we decided to include in the final rule a provision that is essentially the same as in the PAI rule. This provision is based on developing a PUG from a collection of multipurpose equipment, determining the primary product for the PUG, and, generally, complying with the rule that applies to the primary product for all process units within the PUG.

Because we have extended the compliance date for subpart FFFF, a source that primarily manufactures organic chemicals, but also produces a coating product in the same equipment, would not be able to comply with subparts FFFF and HHHHH as EPA intended during the period between the compliance date for subpart HHHHH (December 11, 2006) and subpart FFFF (May 10, 2008). If the source had developed a compliance strategy that was based on a PUG according to 40 CFR 63.2535(l)(3)(i), the compliance option would no longer be available. The source would have to either install and operate interim controls for coating manufacturing operations or comply with the requirements of subpart FFFF on the compliance date for subpart HHHHH, but before the compliance date for subpart FFFF. For the reasons set forth in the discussion of the compliance date extension in the preamble to the proposed amendments for subpart FFFF (70 FR 73098, December 8, 2005), it is unlikely that sources will be able to comply with the revised subpart FFFF by the compliance date for subpart HHHHH. Affected sources will have to review their compliance strategy due to possible significant amendments to subpart FFFF, such as changes to requirements for process condensers and changes to the definition of batch process vent and wastewater stream. If the source was planning to comply with subpart HHHHH by referencing 40 CFR 63.2535(l)(3)(i), it is unlikely the source would have enough time to design and install interim controls. Thus, relying on the presumption that equipment should be regulated according to the standard that effectively applies for a majority of products produced, we are proposing to amend the final HHHHH rule to reference subpart FFFF requirements for a PUG which produces primarily subpart FFFF products. The proposed amendments would also clarify that if the source so chooses, equipment that is part of a PUG in which a MON product is the primary product must comply with the MON by the MON compliance date, not subpart HHHHH by the subpart HHHHH compliance date.

Finally, we are also proposing to clarify what operations by end users are exempt from HHHHH. An end user is someone who applies a coating to substrate. In the preamble to the final rule we stated the final rule does not apply to end user preparation of the coating products for application by the end user (68 FR 69164). We are proposing to add another exemption for operations that modify a purchased coating prior to application at the purchasing facility. This exemption would apply only if the purchased product is already a coating that an end user could apply as purchased.

II. How are we proposing to amend 40 CFR part 63, subpart HHHHH?

A. Definition of Coating and Applicability

We are amending the definition of coating to clarify that products of reaction and separation, such as polymers, resins, and synthetic organic chemicals, are not covered by the final rule. In the final rule coating means any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Almost all affected coating manufacturing operations are described by NAICS codes 325510 (paints and coatings), 325520 (adhesives and sealants), and 325910 (inks). Coatings are typically a product of mechanical processing, for example, paint formulating involves three basic steps: Dispersing of raw materials, tinting and thinning, and filling and packaging. Miscellaneous coatings do not include coating products described by other NAICS codes unless the coating products are produced using mixing and blending type of processes. Coating manufacturing uses materials that have been manufactured and stored prior to mixing and blending.

In addition to changing the definition of "coating," we are also proposing a change to 40 CFR 63.7985 to clarify the types of operations by end users that are exempt. An end user is someone who applies a coating to substrate. In section IV.A of the preamble to the final rule, we stated: "the final rule does not apply to activities conducted by end users of coating products in preparation for application" (68 FR 69164, December 11, 2003). To implement this exemption, we added 40 CFR 63.7985(d)(2), which defined "affiliated operations" at sources that are subject to certain surface coating rules (*i.e.*, subparts KK, GG, JJJJ, MMMM, and

SSSS of 40 CFR part 63). These operations had been examined during the development of the five surface coating rules. We also noted in the preamble to the final rule that similar operations at sources subject to other surface coating rules may be exempt because 40 CFR 63.7985(a)(4) specifies that subpart HHHHH applies only to operations that are not part of an affected source under another subpart of part 63. The final rule, however, does not specifically exempt any operations at sources that are not subject to another subpart of part 63. Thus, to be consistent with our position that subpart HHHHH does not apply to activities conducted by end users of coating products in preparation for application, we are proposing to add another exemption in 40 CFR 63.7985(d). The proposed paragraph (5) in this section would exempt operations that modify a purchased coating prior to application at the purchasing facility. This exemption would apply only if the purchased product is already a coating that an end user could apply as purchased. Operations by an end user to modify such a coating by mixing with additives, perhaps to adjust the viscosity or change the color tint, would be exempt. Note that the modification operations also must be conducted at the source where the modified coating will be applied; modifications at a central location with the modified coating being shipped to multiple facilities within a company would not be exempt. We are specifically requesting comments on the provisions to exempt operations conducted by end users. For example, we are interested in descriptions of activities conducted by end users that are not subject to surface coating rules, including estimates of hazardous air pollutant emissions. We are also interested in alternative suggestions for rule language to achieve our objective of exempting operations by end users that are related to application of premanufactured coating rather than coating manufacturing.

B. Process Unit Groups

In addition, we are amending the final rule to reference the requirements of subpart FFFF for subpart HHHHH coating operations included in a PUG developed under subpart FFFF. According to 40 CFR 63.2535(l)(3)(i) of subpart FFFF, if the primary product of the PUG is subject to subpart FFFF, then compliance with subpart FFFF for all process units in the PUG constitutes compliance with the other part 63 rule. By referencing subpart FFFF, we are clarifying the compliance date for equipment at sources that choose to demonstrate compliance with subpart HHHHH through compliance with 40 CFR 63.2535(l)(3)(i) of subpart FFFF.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the 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 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 entitlement, 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 the proposed amendments are not a "significant regulatory action" under the terms of Executive Order 12866, and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The proposed amendments impose no new information collection requirements on the industry. The proposed amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor reductions in the information collection burden, therefore, the Information Collection Request (ICR) has not been revised.

OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0535 (EPA ICR number 2115.01). A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB 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 Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business according to the Small Business Administration; (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.

For sources subject to this proposed rule, the relevant NAICS and associated employee sizes are listed below:

NAICS 32551—Paint and Coatings Manufacturing—500 employees or fewer.
NAICS 32552—Adhesives and Sealants Manufacturing—500 employees or fewer.
NAICS 32591—Printing Ink Manufacturing—500 employees or fewer.

After considering the economic impacts of today's proposed amendments on small entities, I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. In addition, the proposed amendments will clarify the compliance date for certain equipment that is part of a chemical manufacturing process unit that is also used to produce a coating..

We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

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 by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed 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. Therefore, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175 (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 proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Therefore, the proposed amendments 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. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 proposed amendments are not subject to the Executive Order because they are based on technology performance and not health or safety risks.

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

The proposed amendments do not constitute a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because the proposed amendments are not likely to have a significant adverse effect on the

supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113), 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.

During the rulemaking, EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA–HQ–OAR–2003–0178). The proposed amendments do not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 11, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be 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 HHHHH—[Amended]

2. Section 63.7885 is amended by revising paragraph (d) introductory text and by adding paragraph (d)(5) to read as follows:

§ 63.7985 Am I subject to the requirements in this subpart?

* * * * *

(d) The requirements for miscellaneous coating manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (5) of this section.

* * * * *

(5) Modifying a purchased coating in preparation for application at the purchasing facility.

* * * * *

3. Section 63.7995 is amended by adding introductory text to read as follows:

§ 63.7995 When do I have to comply with this subpart?

Except as specified in § 63.8090, you must comply with this subpart according to the requirements of this section.

* * * * *

4. Section 63.8090 is amended by adding paragraph (c) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(c) *Compliance with 40 CFR part 63, subpart FFFF.*

After the compliance dates specified in § 63.7995, an affected source under this subpart HHHHH that includes equipment that is also part of an affected source under 40 CFR part 63, subpart FFFF is deemed in compliance with this subpart HHHHH if all of the conditions specified in paragraphs (c)(1) through (5) of this section are met.

(1) Equipment used for both miscellaneous coating manufacturing operations and as part of a miscellaneous organic chemical manufacturing process unit (MCPU), as defined in 40 CFR 63.2435, must be part of a process unit group developed in accordance with the provisions in 40 CFR 63.2535(l).

(2) For the purposes of complying with § 63.2535(l), a miscellaneous coating manufacturing "process unit" consists of all coating manufacturing equipment that is also part of an MCPU in the process unit group. All miscellaneous coating manufacturing operations that are not part of a process unit group must comply with the requirements of this subpart HHHHH.

(3) The primary product for a process unit group that includes miscellaneous coating manufacturing equipment must be organic chemicals as described in § 63.2435(b)(1).

(4) The process unit group must be in compliance with the requirements in 40 CFR part 63, subpart FFFF as specified in § 63.2535(l)(3)(i) no later than the applicable compliance dates specified in § 63.2445.

(5) You must include in the notification of compliance status report required in § 63.8070(d) the records as specified in § 63.2535(l)(1) through (3).

5. Section 63.8105 is amended by revising the definition for a "Coating" in paragraph (g) introductory text to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Coating means a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or separated component is not stored prior to formulation. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.

* * * * *

[FR Doc. E6–7495 Filed 5–16–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1488–P2]

RIN 0938–AO12

Medicare Program; Hospital Inpatient Prospective Payment Systems Implementation of the Fiscal Year 2007 Occupational Mix Adjustment to the Wage Index

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the methodology for calculating the occupational mix adjustment announced in the Fiscal Year (FY) 2007 Hospital Inpatient Prospective Payment System (IPPS) proposed rule by applying the occupational mix

adjustment to 100 percent of the wage index using the new occupational mix data collected from hospitals. This proposed rule also proposes to modify hospitals' procedures for withdrawing requests to reclassify for the FY 2007 wage index and for supplementing the FY 2008 reclassification application with official data used to develop the FY 2007 wage index. In addition, we are proposing to replace in full the descriptions of the data and methodology that would be used in calculating the occupational mix adjustment discussed in the FY 2007 IPPS proposed rule.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 12, 2006.

ADDRESSES: In commenting, please refer to file code CMS–1488–P2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1488–P2, P.O. Box 8012, Baltimore, MD 21244–8012. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1488–PN2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8012.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–4492 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Valerie Miller, (410) 786–4535.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing CMS–1488–P2 and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

A. General Background

On April 25, 2006, we published in the **Federal Register** the FY 2007 IPPS proposed rule (71 FR 23996) that set forth the proposed changes to the Medicare IPPS for operating costs and for capital-related costs. In the FY 2007 IPPS proposed rule, we discussed our proposals for calculating the FY 2007 occupational mix adjustment. We proposed to use the same CMS Wage Index Occupational Mix Survey and Bureau of Labor Statistics (BLS) data that we used for the FY 2005 and FY 2006 wage indices, with a few exceptions. We also proposed to use a blend of the occupational mix adjusted wage index and the unadjusted wage index. Specifically, we proposed to adjust 10 percent of the FY 2007 wage index by a factor reflecting occupational mix. We stated that a 10 percent adjustment for occupational mix was a prudent policy because we were proposing to rely on the same survey data used in FY 2005 and FY 2006 wage indices.

On April 3, 2006, in *Bellevue Hosp. Ctr* v. *Leavitt,* the Court of Appeals for the Second Circuit (the Court) ordered the Centers for Medicare & Medicaid Services (CMS) to apply the occupational mix adjustment to 100 percent of the wage index effective for FY 2007. The Court ordered CMS to "immediately * * * collect data that are sufficiently robust to permit full application of the occupational mix adjustment." The Court also ordered that all "data collection and measurement and any other preparations necessary for full application be completed by September 30, 2006, at which time the agency is to immediately apply the adjustment in full." For more information see WestLaw 2006 WL 851934 at *13.

To comply with the Court's order, on April 21, 2006, we issued a Joint-Signature Memorandum (see JSM–06412) to all Medicare Fiscal Intermediaries (FIs) announcing our plans to collect new occupational mix data from hospitals.

B. Legislative History

Section 1886(d)(3)(E) of the Social Security Act (the Act) requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in

hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of statistical areas established by the Office of Management and Budget (OMB). (See (71 FR 24074) for a discussion of the proposed FY 2007 hospital wage index based on the statistical areas, including OMB's revised definitions of Metropolitan Areas).

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, the section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. The provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index. See the FY 2007 IPPS proposed rule (71 FR 24148 through 24149) for a discussion of the original proposed adjustment for FY 2007.

As discussed in the FY 2007 IPPS proposed rule (71 FR 24082), we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and section 1886(d)(10) of the Act when calculating the wage index. Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts to ensure that aggregate payments under the IPPS after implementation of the provisions of sections 1886(d)(8)(B) and section 1886(d)(8)(C) of the Act and section 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. See the FY 2007 IPPS proposed rule (71 FR 24149) for a discussion of the original proposed budget neutrality adjustment for FY 2007.

C. Revised Proposed Changes to the Occupational Mix Adjustment for the Proposed FY 2007 Wage Index

Section 1886(d)(3)(E) of the Act provides for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses (RNs), licensed practical nurses (LPNs), nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor.

1. Development of Data for the Proposed Occupational Mix Adjustment

[If you choose to comment on issues in this section, please include the caption "DEVELOPMENT OF DATA FOR THE PROPOSED OCCUPATIONAL MIX ADJUSTMENT" at the beginning of your comments.]

Section 1886(d)(3)(E) of the Act requires us to conduct a new survey at least once every 3 years. On October 14, 2005, we published a notice in the **Federal Register** (70 FR 60092) proposing to use a new survey, the 2006 Medicare Wage Index Occupational Mix Survey, (the 2006 survey) to apply an occupational mix adjustment to the FY 2008 wage index. In the proposed 2006 survey, we included several modifications based on the comments and recommendations we received on the 2003 survey including (1) Allowing hospitals to report their own average hourly wage rather than using BLS data; (2) extending the prospective survey period; and (3) reducing the number of occupational categories but refining the subcategories for RNs.

We made the changes to the occupational categories in response to MedPAC comments to the FY 2005 IPPS final rule (69 FR 49036). Specifically, MedPAC recommended that CMS assess whether including subcategories of RNs would result in a more accurate occupational mix adjustment. MedPAC believed that including all RNs in a single category may obscure significant wage differences among the subcategories of RNs, for example, the wages of surgical RNs and floor RNs may differ. Also, to offset additional reporting burden for hospitals, MedPAC recommended that CMS should combine the general service categories that account for only a small percentage of a hospital's total hours with the "all other occupations" category, since most of the occupational mix adjustment is correlated with the nursing general service category.

Also, in response to the public comments on the October 14, 2005 notice, we modified the 2006 survey. On February 10, 2006, we published a **Federal Register** notice (71 FR 7047) that solicited comments and announced our intent to seek OMB approval on the revised occupational mix survey (Form CMS–10079 (2006)).

The revised 2006 survey provides for the collection of hospital-specific wages and hours data, a 6-month prospective reporting period (that is, January 1, 2006 through June 30, 2006), the transfer of each general service category that comprised less than 4 percent of total hospital employees in the 2003 survey to the "all other occupations" category (the revised survey focuses only on the mix of nursing occupations), additional clarification of the definitions for the occupational categories, an expansion of the RN category to include functional subcategories, and the exclusion of average hourly rate data associated with advance practice nurses.

The 2006 survey includes only 2 general occupational categories: Nursing and "all other occupations." The Nursing category has 4 subcategories: RNs, LPNs, Aides, Orderlies, Attendants, and Medical Assistants. The RN subcategory includes 2 functional subcategories: Management Personnel and Staff Nurses or Clinicians. As indicated above, the 2006 survey provides for a 6-month data collection period, from January 1, 2006 through June 30, 2006. However, we are allowing flexibility for the reporting period begin and end dates to accommodate some hospitals' bi-weekly payroll and reporting systems. That is, the 6-month reporting period must begin on or after December 25, 2005, and must end before July 9, 2006.

To comply with the Bellevue Court's order, as discussed above, we propose to collect new survey data, instead of using the 2003 survey data proposed in the FY 2007 IPPS proposed rule, to calculate the occupational mix adjustment for the FY 2007 wage index. Since hospitals are currently collecting data for the revised 2006 survey, we are proposing to use the first 3 months of that data (that is, from January 1, 2006 through March 31, 2006) to calculate the FY 2007 occupational mix adjustment. In order to allow sufficient time for hospitals, FIs, and CMS to collect, review, and correct the new data, and for us to perform required analyses and apply the new data in calculating the FY 2007 occupational mix adjustment, it would be impossible for us to apply the full 6-months of data by October 1, 2006. (See

section II.C.2 below for proposed detailed data collection, review, and correction process.)

2. Timeline for the Collection, Review, and Correction of the Occupational Mix Data

[If you choose to comment on issues in this section, please include the caption "TIMELINE" at the beginning of your comments.]

On April 21, 2006, we issued a Joint-Signature Memorandum (JSM–06412) instructing all FIs to immediately alert the hospitals they service to the changes in the schedule for submitting the occupational mix data files. The Joint-Signature Memorandum is available on the CMS Web site at: *http://www.cms.hhs.gov/AcuteInpatientPPS.* Click on "Wage Index Files" and the link is titled: *2006 Occupational Mix Survey—Interim Data Collection—CMS Memo to Fiscal Intermediaries.*

The Joint-Signature Memorandum provides hospitals and FIs with the revised schedule for the occupational mix survey data that would be used in the FY 2007 wage index. The schedule includes deadlines for—

- Hospitals to submit occupational mix data. The deadline is June 1, 2006.
- FI review of the submitted data. The deadline is June 22, 2006.
- Availability of the submitted data on the CMS Web site. The deadline is June 29, 2006.
- Hospitals to submit requests to their FIs for corrections to their interim occupational mix data. The deadline is July 13, 2006.
- FIs to submit corrected interim occupational mix survey data for the January 1, 2006 through March 31, 2006 period. The deadline is July 27, 2006.

We note that it is critical that hospitals provide information according to the dates provided in this schedule in order to be able to appeal any disputed calculations at a later point to the Provider Review Reimbursement Board (PRRB). The final deadline for the FIs to make occupational mix data available to CMS is July 27, 2006. These data would reflect FI review and the resolution of any errors or adjustments between the hospitals and FI. Once these data are available on the CMS Web site, changes to a hospital's occupational mix data would be allowed only in those very limited situations involving an error by the FI or CMS that the hospital could not have known about before its review of the final occupational mix data file. Specifically, neither the FI nor CMS would approve the following types of requests:

- Requests for occupational mix data corrections that were submitted too late to be included in the data transmitted to CMS by FIs on or before July 27, 2006.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the June 29, 2006 occupational mix file.

Verified corrections to the occupational mix received by the FIs and CMS (that is, by July 13, 2006) would be incorporated into the final wage index for FY 2007, to be effective October 1, 2006.

We created the process described above to resolve all substantive occupational mix correction disputes before we finalize the wage and occupational mix data for the FY 2007 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above would not be afforded a later opportunity to submit occupational mix data corrections or to dispute the FI's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above would not be permitted to challenge later, before the PRRB, the failure of CMS to make a requested data revision. (See *W.A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001) and *Palisades General Hospital* v. *Thompson*, No. 99–1230 (D.D.C. 2003)). We also refer the reader to the FY 2000 IPPS final rule (64 FR 41513) for a discussion of the parameters for appealing to the PRRB for wage index data corrections.

We believe the occupational mix data correction process described above provides hospitals with the opportunity to bring errors in their occupational mix data to the FI's attention.

Since hospitals would have access to the final occupational mix data by June 29, 2006, they would have the opportunity to detect any data entry or tabulation errors made by the FI or CMS before the development and publication of the final FY 2007 wage index and the implementation of the FY 2007 wage index on October 1, 2006. We believe that if hospitals avail themselves of the opportunities afforded to provide and make corrections to the occupational mix data, the wage index implemented on October 1, 2006 should be accurate. In the event that errors are identified by hospitals and brought to our attention after July 13, 2006, we would only make mid-year changes to the wage index in accordance with § 412.64(k). For a detailed discussion see the FY 2007 IPPS proposed rule (71 FR 24089). However, note that a hospital's deadline for making corrections to the proposed occupational mix data is July 13, 2006.

3. Calculation of the Proposed FY 2007 Occupational Mix Adjustment Factor and the Proposed FY 2007 Occupational Mix Adjusted Wage Index

[If you choose to comment on issues in this section, please include the caption "CALCULATION OF THE PROPOSED FY 2007 OCCUPATIONAL MIX ADJUSTMENT" at the beginning of your comments.]

We are proposing to use the following steps for calculating the proposed FY 2007 occupational mix adjustment factor for the proposed FY 2007 wage index:

Step 1—For each hospital, determine the percentage of the total nursing category attributable to a nursing subcategory by dividing the nursing subcategory hours by the total nursing category's hours (RN Management Personnel and RN Staff Nurses or Clinicians are treated as separate nursing subcategories). Repeat this computation for each of the 5 nursing subcategories: RN Management Personnel, RN Staff Nurses or Clinicians, LPNs; Nursing Aides, Orderlies, and Attendants; and Medical Assistants.

Step 2—Determine a national average hourly rate for each nursing subcategory by dividing a subcategory's total salaries for all hospitals in the occupational mix survey database by the subcategory's total hours for all hospitals in the occupational mix survey database.

Step 3—For each hospital, determine an adjusted average hourly rate for each nursing subcategory by multiplying the percentage of the total nursing category (from Step 1) by the national average hourly rate for that nursing subcategory (from Step 2). Repeat this calculation for each of the 5 nursing subcategories.

Step 4—For each hospital, determine the adjusted average hourly rate for the total nursing category by summing the adjusted average hourly rate (from Step 3) for each of the nursing subcategories.

Step 5—Determine the national average hourly rate for the total nursing category by dividing total nursing category salaries for all hospitals in the occupational mix survey database by total nursing category hours for all hospitals in the occupational mix survey database.

Step 6—For each hospital, compute the occupational mix adjustment factor for the total nursing category by dividing the national average hourly rate for the total nursing category (from Step 5) by the hospital's adjusted average hourly rate for the total nursing category (from Step 4).

If the hospital's adjusted average hourly rate is less than the national

average hourly rate (indicating the hospital employs a less costly mix of nursing employees), the occupational mix adjustment factor would be greater than 1.0000.

If the hospital's adjusted average hourly rate is greater than the national average hourly rate, the occupational mix adjustment factor would be less than 1.0000.

Step 7—For each hospital, calculate the occupational mix adjusted salaries and wage-related costs for the total nursing category by multiplying the hospital's total salaries and wage-related costs (from Step 5 of the unadjusted wage index calculation in section III.F. of the preamble of the FY 2007 IPPS proposed rule (71 FR 24081), by the percentage of the hospital's total workers attributable to the total nursing category (using the occupational mix survey data, this percentage is determined by dividing the hospital's total nursing category hours by the hospital's total hours for "nursing and all other") and by the total nursing category's occupational mix adjustment factor (from Step 6 above).

The remaining portion of the hospital's total salaries and wage-related costs that is attributable to all other employees of the hospital is not adjusted by the occupational mix. A hospital's all other portion is determined by subtracting the hospital's nursing category percentage from 100 percent.

Step 8—For each hospital, calculate the total occupational mix adjusted salaries and wage-related costs for a hospital by summing the occupational mix adjusted salaries and wage-related costs for the total nursing category (from Step 7) and the portion of the hospital's salaries and wage-related costs for all other employees (from Step 7).

To compute a hospital's occupational mix adjusted average hourly wage, divide the hospital's total occupational mix adjusted salaries and wage-related costs by the hospital's total hours (from Step 4 of the unadjusted wage index calculation in section III.F. of the preamble of the FY 2007 IPPS proposed rule (71 FR 24080).

Step 9—To compute the occupational mix adjusted average hourly wage for an urban or rural area, sum the total occupational mix adjusted salaries and wage-related costs for all hospitals in the area, then sum the total hours for all hospitals in the area. Next, divide the area's occupational mix adjusted salaries and wage-related costs by the area's hours.

Step 10—To compute the national occupational mix adjusted average hourly wage, sum the total occupational mix adjusted salaries and wage-related costs for all hospitals in the Nation, then sum the total hours for all hospitals in the Nation. Next, divide the national occupational mix adjusted salaries and wage-related costs by the national hours.

Step 11—To compute the occupational mix adjusted wage index, divide each area's occupational mix adjusted average hourly wage (Step 9) by the national occupational mix adjusted average hourly wage (Step 10).

Step 12—To compute the Puerto Rico specific occupational mix adjusted wage index, follow Steps 1 through 11 above.

Table 1 below is an illustrative example of the occupational mix adjustment.

TABLE 1.—EXAMPLE OF OCCUPATIONAL MIX ADJUSTMENT

			Step 1	Step 2	Step 3	Step 5	Step 6	In Step 7
			Provider percentage by sub-category	National average hourly wages by sub-category	Provider-adjusted average hourly wage	National-adjusted nursing average hourly wage	Nursing occupational mix adjustment factor	Provider percentage by total
Hospital A								
Provider Occupational Mix Hours								
Nursing Hours:								
RN Management	202,387.00		9.84	$50.00	$4.92			
RN Staff	1,439,742.00		70.00	30.00	21.00			
LPNs	67,860.00		3.30	20.00	0.66			
Nurse Aides	259,177.00		12.60	13.00	1.64			
Medical Assistants	87,622.00		4.26	12.00	0.51			
Total Nursing Hours	2,056,788.00				28.73	$27.00	0.9398	29.15
All Other Employees Hours	5,000,000.00				step 4			70.85
Total Hours	7,056,788.00							
Wage Data from Cost Report:								
Wages (From S–3, Parts II and III)	$83,312,942.55							
Hours (From S–3, Parts II and III)	3,836,299.60							
Hospital A Unadjusted Average Hourly Wage	$21.72							
Nursing Occupational Mix Wages	$22,821,141	step 7						
All Other Employees Unadjusted Occupational Mix Wages	$59,030,357	step 7						
Total Occupational Mix Wages	$81,851,498	step 8						

TABLE 1.—EXAMPLE OF OCCUPATIONAL MIX ADJUSTMENT—Continued

			Step 1	Step 2	Step 3	Step 5	Step 6	In Step 7
			Provider percentage by sub-category	National average hourly wages by sub-category	Provider-adjusted average hourly wage	National-adjusted nursing average hourly wage	Nursing occupational mix adjustment factor	Provider percentage by total
Hospital A Final Occupational Mix Adj. Avg. Hourly Wage	$21.34	step 8						
Hospital B								
Provider Occupational Mix Hours:								
Nursing Hours:								
RN Management	70,333.00		3.01	50.00	1.51			
RN Staff	1,430,114.00		61.27	30.00	18.38			
LPNs	159,795.00		6.85	20.00	1.37			
Nurse Aides	391,201.00		16.76	13.00	2.18			
Medical Assistants	282,728.00		12.11	12.00	1.45			
Total Nursing Hours	2,334,171.00				24.89	27.00	1.0848	31.83
All Other Employees Hours	5,000,000.00				step 4			70.85
Total Hours	7,334,171.00							
Wage Data from Cost Report								
Wages (From S–3, Parts II and III)	$25,979,714							
Hours (From S–3, Parts II and III)	1,097,585							
Hospital B Unadjusted Average Hourly Wage	$23.67							
Nursing Occupational Mix Wages	$8,969,717	step 7						
All Other Employees Unadjusted Occupational Mix Wages	$17,711,418	step 7						
Total Occupational Mix Wages	$26,681,135	step 8						
Hospital B Final Occupational Mix Adj. Avg. Hourly Wage	$24.31	step 8						

Note: The numbers used in this example are hypothetical.

Because the occupational mix adjustment is required by statute, all hospitals that are subject to payments under the IPPS, or any hospital that would be subject to the IPPS if not granted a waiver, must complete the occupational mix survey, unless the hospital has no associated cost report wage data that are included in the FY 2007 wage index.

For the FY 2005 and FY 2006 final wage indices, we used the unadjusted wage data for hospitals that did not submit occupational mix survey data. For calculation purposes, this equates to applying the national nursing mix to the wage data for these hospitals, because hospitals having the same mix as the Nation would have an occupational mix adjustment factor equaling 1.0000. However, an adjustment may not be equitable in situations where the hospital has a higher or lower than average occupational mix than the Nation as a whole. If the hospital's occupational mix is higher than the average for the nation as a whole, hospitals in other areas are disadvantaged by the hospital not providing occupational mix information. If the hospital's occupational mix is lower than the average for the Nation as a whole, other hospitals in the same geographic area would be disadvantaged by the hospital not providing the information.

In the FY 2005 and FY 2006 IPPS final rules (69 FR 49035 and 70 FR 47368), we noted that we would revisit this matter with subsequent collections of the occupational mix data. For the FY 2007 wage index, we are proposing to use 1 of 4 options for treating the occupational mix data for non-responsive hospitals: (1) Assign the hospital an occupational mix adjustment factor of 1.0000 as we did for FY 2005 and FY 2006; (2) assign the hospital the average occupational mix adjustment factor for its labor market area; (3) assign the hospital the lowest occupational mix adjustment factor for its labor market area; or (4) assign the hospital the average occupational mix factor for similar hospitals, based on factors such as, geographic location, bed size, teaching versus non-teaching status and case mix. We are requesting comments on these or other alternatives for equitably addressing the situation of hospitals that are not responsive to the occupational mix survey.

D. Implementation of the Proposed FY 2007 Occupational Mix Adjusted Wage Index

[If you choose to comment on issues in this section, please include the caption "IMPLEMENTATION OF

PROPOSED FY 2007 OCCUPATIONAL MIX ADJUSTMENT" at the beginning of your comments.]

In the FY 2007 IPPS proposed rule, we proposed to adjust 10 percent of the FY 2007 wage index by the occupational mix adjustment factor. However, to comply with the Court's order, we would apply the occupational mix adjustment to 100 percent of the FY 2007 wage index. Therefore, we are proposing to calculate the FY 2007 occupational mix adjustment using the first 3 months of the 2006 survey data and apply that adjustment to 100 percent of the FY 2007 wage index. We also believe that, with the modifications we included in the 2006 survey, hospitals' experience with collecting occupational mix survey data, and the review and correction process described in section C.2 of this preamble, a 100 percent adjustment is reasonable.

Since the 2006 survey data is currently being collected by hospitals, we are unable to estimate how the new data would affect the FY 2007 wage index. Due to the short time frame for implementing the Court's order, we do not expect to be able to provide the occupational mix adjusted wage index tables, rates, and impacts with the FY 2007 IPPS final rule. We are proposing to post the FY 2007 occupational mix adjusted wage index tables and related impacts on the CMS Web site shortly after we publish the FY 2007 IPPS final rule, and in advance of October 1, 2006. We believe these procedures would comply with section 1886(d)(6) of the Act because, by August 1, we would describe our data and methods for calculating the wage index and IPPS rates in the FY 2007 IPPS final rule, but the actual rates and wage tables would not be issued until a later date. Further, we expect to discuss in the IPPS final rule that the new occupational mix data should have a redistributive effect on hospital payments and should not increase or decrease total payments, as the wage index is budget neutral. Also, due to the unusual circumstances imposed by the Court's order, we therefore would depart from our normal practice of providing the weights and factors that would be used in calculating the IPPS rates along with the final rule. Given the short timeframe for collecting and properly allowing for corrections of occupational mix data, for FY 2007, these weights and factors would be published on the CMS Web site after the final rule, but in advance of October 1, 2006.

E. Impact of the Proposed FY 2007 Occupational Mix Adjusted Wage Index on the Out-migration Adjustment and Hospital Reclassifications

[If you choose to comment on issues in this section, please include the caption "OUT-MIGRATION" at the beginning of your comments.]

1. FY 2007 Wage Index Adjustment Based on Commuting Patterns of Hospital Employees

In accordance with section 505 of Public Law 108–173, beginning with FY 2005, we established a process to make adjustments to the hospital wage index based on commuting patterns of hospital employees. The process, outlined in the FY 2005 IPPS final rule (69 FR 49061), provides for an increase in the wage index for hospitals located in certain counties that have a relatively high percentage of hospital employees who reside in the county but work in a different county (or counties) with a higher wage index. The adjustments to the wage index are effective for 3 years, unless a hospital requests to waive the application of the adjustment. A county would not lose its status as a qualifying county due to wage index changes during the 3-year period, and counties would receive the same wage index increase for those 3 years. Hospitals that receive the adjustment to their wage index are not eligible for reclassification under section 1886(d)(8) of the Act or section 1886(d)(10) of the Act.

Hospitals located in counties that qualify for the wage index adjustment are to receive an increase in the wage index that is equal to the average of the differences between the wage indices of the labor market area(s) with higher wage indices and the wage index of the resident county, weighted by the overall percentage of hospital workers residing in the qualifying county who are employed in any labor market area with a higher wage index. We employ the pre-reclassified wage indices in making these calculations.

In the FY 2007 IPPS proposed rule (71 FR 24264 through 24272), in the Out-Migration Adjustment table, Table 4J, we identified hospitals located in qualifying counties. Table 4J also lists the proposed adjustments calculated for qualifying hospitals. Hospitals that newly qualified for the adjustment in FY 2005 or FY 2006 are eligible to receive the same adjustment in FY 2007. In the FY 2007 IPPS proposed rule, we determined county eligibility based on a 10 percent occupational mix adjustment to the wage index. However, under this proposed rule, we would apply the occupational mix adjustment to 100 percent of the FY 2007 wage index. Therefore, we must re-evaluate which counties are newly eligible for the out-migration adjustment in FY 2007 using the 100 percent occupational mix adjusted wage index data. We are proposing to publish an updated version of Table 4J showing eligible hospitals and their corresponding wage index adjustments on the CMS Web site shortly after we publish the IPPS final rule, and in advance of October 1, 2006.

2. Proposed Procedures for Withdrawing Reclassifications in FY 2007

[If you choose to comment on issues in this section, please include the caption "WITHDRAWING RECLASSIFICATIONS" at the beginning of your comments.]

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the IPPS. The specific procedures and rules that apply to the geographic reclassification process are outlined in § 412.230 through § 412.280.

In the FY 2007 IPPS proposed rule (71 FR 24377), we identified hospitals that have reclassifications effective in FY 2007. As specified in § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw an application for reclassification or terminate an existing 3-year reclassification for FY 2007. The request must be received by the MGCRB within 45 days of publication of the IPPS proposed rule.

However, as a result of the Court order that we collect new occupational mix data and calculate a 100 percent occupational mix adjustment, information in the IPPS proposed rule that hospitals use to make these decisions regarding reclassification withdrawals is now obsolete. In addition, the necessary data (including wage indices and out-migration adjustments) hospitals utilize in evaluating whether to accept or terminate a previously approved reclassification would not be available until after the IPPS final rule has been published. Therefore, in this limited circumstance, we are proposing to suspend the 45-day deadline and are proposing to establish the new procedure described below to withdraw from reclassifications for FY 2007. Some hospitals may have adhered to the established process and notified the MGCRB of their decision to withdraw or terminate a reclassification in accordance with § 412.273 before publication of this proposed rule.

Since hospitals made these decisions based on information in the FY 2007 IPPS proposed rule that is now obsolete, we are proposing that the MGCRB not act on these withdrawal requests. Instead, we are proposing to apply the following procedures for withdrawal determinations for all hospital reclassifications for FY 2007. Specifically, the FY 2007 IPPS rates must go into effect on October 1, 2006. Based on our current schedule, we do not expect to calculate the final occupational mix adjusted wage indices until sometime after August 1, 2006 and before October 1, 2006. For this reason, we do not believe there is sufficient time for CMS to make the final occupational mix adjusted wage indices available and allow hospitals a 45-day period to make a final decision regarding whether to withdraw a reclassification for FY 2007. In the interim, we propose to make reclassification withdrawal determinations based on what we perceive would be most advantageous to the hospital based on the 100 percent occupational adjusted wage index data and the out-migration adjustment, if applicable.

We also propose to make the final occupational mix adjusted wage indices and out-migration adjustments and our interim decisions on hospital reclassifications available to the public on the CMS Web site sometime after August 1, 2006, but before October 1, 2006. We would allow hospitals a 30-day period from the date the 100 percent occupational mix adjusted wage index data is made available where they can make final, informed determinations regarding whether to maintain or revise the decision made by CMS regarding its reclassification status.

Hospitals would have 30 days after the data is made available on the CMS Web site to submit, in writing, whether they wish to reverse the reclassification decision made by CMS. We will make every effort to provide the final data before September 1, 2006 so that the 30 day period to make these determinations would end before October 1, 2006 and no retroactive adjustments would be necessary. The request for a withdrawal of a reclassification or termination of an existing 3-year reclassification that would be effective in FY 2007 must be received by the MGCRB, in writing with a copy to CMS, no later 30 days after the data is made available on the CMS Web site. The mailing address is: 2520 Lord-Baltimore Drive, Suite L, Baltimore, MD 21244–2670.

3. Procedures for Hospitals Applying for Reclassification Effective in FY 2008 and Reinstating Reclassifications in FY 2008.

[If you choose to comment on issues in this section, please include the caption "RECLASSIFICATION FOR FY 2008" at the beginning of your comments.]

Applications for FY 2008 reclassifications are due to the MGCRB by September 1, 2006. We note that this deadline also applies for canceling a previous wage index reclassification withdrawal or termination under § 412.273(d). As we noted in the FY 2007 IPPS proposed rule (71 FR 24083), applications and other information about MGCRB reclassifications may be obtained, beginning in mid-July, on the CMS Web site at: *http://www.cms.hhs.gov/mgcrb/*, or by calling the MGCRB at (410) 786–1174.

The MGCRB, in evaluating a hospital's request for reclassification for FY 2008 for the wage index, must utilize the official data used to develop the FY 2007 wage index. The wage data used to support the hospital's wage comparisons must be from the CMS hospital wage survey. Generally, the source for this data would be the IPPS final rule that is expected to be published on or about August 1, 2006. However, under this rule, the wage tables identifying the 3-year average hourly wage of hospitals would not be available for the FY 2007 IPPS final rule. Therefore, we are proposing to make the data available subsequent to August 1, 2006 but before October 1, 2006.

Section 1886(d)(10)(C)(ii) of the Act indicates that a hospital requesting a change in geographic classification for a FY must submit its application to the MGCRB not later than the first day of the 13-month period ending on September 30 of the preceding FY. Thus, the statute requires that FY 2008 reclassification applications be submitted to the MGCRB by no later than September 1, 2006. For this reason, hospitals must file an FY 2008 reclassification application by the September 1, 2006 deadline even though the average hourly wage data used to develop the final FY 2007 wage indices may not yet be available. We note that, under § 412.256(c), the MGCRB must review applications and notify the hospital if it determines that the application is incomplete.

As outlined in § 412.256(c)(2), hospitals with incomplete applications have the opportunity to request that the MGCRB grant a hospital that has submitted an application by September 1, 2006 an extension beyond September 1, 2006 to complete its application. Thus, while hospitals must file an application for reclassification to the MGCRB by September 1, 2006, they would be able to supplement the reclassification application with official data used to develop the FY 2007 wage index after filing their initial application. We are proposing that hospitals file a supplement to the reclassification application with official data used to develop the FY 2007 wage index no later than 30 days after the data is made available on the CMS website.

II. Provisions of the Proposed Rule

This proposed rule replaces in full the descriptions of the data and methodology that would be used in calculating the occupational mix adjustment discussed in the FY 2007 IPPS proposed rule (71 FR 23996). Readers should refer to this proposed rule on the occupational mix adjustment and reclassification deadlines and procedures.

Consistent with the Court's order to collect new occupational mix data and apply the "adjustment in full," we are proposing to apply the occupational mix adjustment to 100 percent, rather than 10 percent, of the wage index using the new occupational mix data we are collecting from hospitals.

We are proposing to modify procedures for withdrawing requests to reclassify for the FY 2007 wage index so that hospitals would be able to make these decisions after we publish the new occupational mix adjusted average hourly wages and wage index values. In addition, we are proposing that hospitals applying for reclassification in FY 2008 file a supplement that includes the official data used to develop the FY 2007 wage index no later than 30 days after the data is made available on the CMS website.

We are proposing to calculate the FY 2007 occupational mix adjustment using the first 3 months of the 2006 survey data.

We are proposing 4 options for treating the occupational mix data for non-responsive hospitals: (1) Assign the hospital an occupational mix adjustment factor of 1.0000 as we did for FYs 2005 and 2006; (2) assign the hospital the average occupational mix adjustment factor for its labor market area; (3) assign the hospital the lowest occupational mix adjustment factor for its labor market area; or (4) assign the hospital the average occupational mix factor for similar hospitals, based on factors such as, geographic location, bed

size, teaching versus nonteaching status and case mix.

We are proposing to respond to public comments in the FY 2007 IPPS final rule.

We are proposing to post the FY 2007 occupational mix adjusted wage index tables and related impacts on the CMS Web site shortly after we publish the FY 2007 IPPS final rule, and in advance of October 1, 2006.

III. Collection of Information Requirements

[If you choose to comment on issues in this section, please include the caption "COLLECTION OF INFORMATION REQUIREMENTS" at the beginning of your comments.]

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35)."

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of 60-Day Comment Period

[If you choose to comment on issues in this section, please include the caption "WAIVER OF 60-DAY COMMENT PERIOD" at the beginning of your comments.]

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and permit a 60-day comment period. This period, however, may be shortened when the agency finds good cause that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. For this proposed rule, we are waiving the 60-day comment period for good cause and allowing a 30-day comment period that coincides with the comment period on the FY 2007 IPPS proposed rule.

Ordinarily, we begin our preparations for issuing an IPPS proposed rule early in a calendar year so that our proposals may be on public display in early spring of that year. This schedule allows for a 60-day comment period closing in either late spring or early summer, as well as a one-to-two-month period to consider all comments and appropriately respond to them.

In this case, we received the Court's order after almost all of the IPPS proposed rule had already been prepared and finalized. The Court's order requiring that we collect new occupational mix data by September 30, 2006 with immediate application necessitated this modification to the original FY 2007 IPPS proposed rule. A 60-day comment period on this proposal for how we plan to implement the Court's order would be both impracticable and contrary to the public interest, because the comment period would end on July 11, 2006 and would not allow the agency sufficient time to process the comments and respond to them by the August 1, 2006 date for the final rule. In addition, we do not believe it would be appropriate to review comments relating to the occupational mix in isolation from comments received on the remainder of the FY 2007 IPPS proposed rule.

Because the FY 2007 IPPS proposed rule is an inter-dependent system (for example, occupational mix adjustments affect wage indices, which affect reclassifications and budget neutrality) extending the comment period to take account of this occupational mix proposal would necessarily entail not being able to consider the comments on the remainder of the proposed rule until July 11, 2006. We believe it would be contrary to the public interest to delay consideration of comments that were received timely on the original FY 2007 IPPS proposed rule, solely due to an intervening Court order. If we did delay consideration, timely filed comments would receive a shorter period of time for consideration by the agency. It also would be impracticable to consider all FY 2007 IPPS comments by July 11, 2006, as doing so would leave insufficient time for the agency to properly respond to comments and appropriately consider and resolve whether any of the proposed policies would be modified in light of comments received. Therefore, we find good cause to waive the 60-day comment period for this rule of proposed rulemaking.

VI. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption "IMPACT" at the beginning of your comments.]

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is not a major rule, rather it modifies the occupational mix adjustment to the wage index, which is budget neutral, as published in the FY 2007 IPPS proposed rule (71 FR 23996). While there may be a redistributive effect on payments to hospitals, total program payments would neither increase nor decrease as a result of this proposed rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. This proposed rule may result in a redistributive effect on payments to hospitals, therefore, it could result in a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule may result in a redistributive effect on payments to hospitals, therefore, it could result in a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also

requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule will not have an effect on State, local, or tribal governments in the aggregate nor will private sector costs be greater than the $120 million threshold, since this rule is purely budget neutral.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would not have a substantial effect on State or local governments.

This proposed rule does not include analyses for either the RFA or section 1102(b) of the Act because the data are currently being collected for the 2006 occupational mix survey. Therefore, in this proposed rule, we are unable to estimate how the new occupational mix data would affect the FY 2007 wage index.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 9, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 11, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–4608 Filed 5–12–06; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition To List the Polar Bear as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the status review of polar bears (*Ursus maritimus*) to determine if listing this species as threatened under the Endangered Species Act of 1973, as amended (Act), is warranted. This action will provide all interested parties with an additional opportunity to submit written comments for our status review of this species. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: We will accept comments and information until 5 p.m. on June 16, 2006. Any comments received after the closing date may not be considered in the final decision on the status review of this species.

ADDRESSES: If you wish to comment, you may submit your comments and/or information concerning this species and the status review by any one of the following methods:

1. You may submit written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503.

2. You may hand-deliver written comments to our Marine Mammals Management Office at the address given above.

3. You may send your comments by electronic mail (e-mail) directly to the Service at *AK_Polarbear@fws.gov*, or to the Federal eRulemaking Portal at *http://www.regulations.gov*. For more information on submitting e-mail comments, see the Public Comments Solicited section below.

FOR FURTHER INFORMATION CONTACT: Scott Schliebe (see **ADDRESSES**), telephone, 907–786–3800; facsimile, 907–786–3816.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We specifically seek information on the status of the polar bear throughout its range, including:

(1) Information on taxonomy, distribution, habitat selection (especially denning habitat), food habits, population density and trends, habitat trends, and effects of management on polar bears;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of polar bears and their principal prey over the short and long term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes of the distribution and abundance of polar bears and their principal prey over the short and long term;

(4) Information on management programs for polar bear conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs that benefit polar bears; and

(5) Information relevant to whether any populations of the species may qualify as distinct population segments.

We will base our finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

When e-mailing your comments, your submission must include "Attn: Polar Bear" in the subject line of your message, and you must not use special characters or any form of encryption. 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. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section. In the event that our internet connection is not functional, please submit your comments by one of the alternate methods mentioned in the **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 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.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Marine Mammals Management Office in Anchorage, Alaska (see **ADDRESSES**).

Background

On February 9, 2006, we published a notice of 90-day petition finding and initiation of status review in the **Federal Register** (71 FR 6745) to determine if listing the polar bear under the Act is warranted. The initial public comment period to provide information for this review was open for 60 days, ending April 10, 2006.

We are reopening the public comment period for 30 days in response to requests we received from the public regarding their intent to provide the Service with additional information, including information from other polar bear range states (e.g., Canada and Russia) on the worldwide status of polar bears and to ensure that all interested parties have an opportunity to submit comment and information to us concerning the status of polar bears.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 8, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–7448 Filed 5–16–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 95
Wednesday, May 17, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0070]

Notice of Request for Extension of Approval of an Information Collection; Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations restricting the importation of products of poultry and birds into the United States in order to prevent the introduction of poultry disease.

DATES: We will consider all comments that we receive on or before July 17, 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–2006–0070 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0070, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0070.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of products of poultry and birds, contact Dr. Karen James-Preston, Director, Technical Trade Services Team-Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Poultry Products.

OMB Number: 0579–0141.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is authorized, among other things, to prohibit the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations.

Part 94, § 94.6, governs the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds to prevent the introduction of exotic Newcastle disease (END) and highly pathogenic avian influenza subtype H5N1 into the United States. Various conditions for importation apply.

These conditions include four information collection activities: (1) A certificate of origin that must be issued, (2) serial numbers that must be recorded, (3) records that must be maintained, and (4) cooperative service agreements that must be signed.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.149 hours per response.

Respondents: Full-time salaried veterinarians employed by the national government of the exporting region.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 33.6.

Estimated annual number of responses: 202.

Estimated total annual burden on respondents: 30 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of May 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–7455 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0065]

Notice of Request for Extension of Approval of an Information Collection; Permit for Movement of Restricted Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations requiring permits for the interstate movement of certain animals.

DATES: We will consider all comments that we receive on or before July 17, 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–2006–0065 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0065.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding permits for the interstate movement of certain animals, contact Dr. Debra Donch, Brucellosis Program Manager, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale MD 20737; (301) 734–5952. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Permit for Movement of Restricted Animals.

OMB Number: 0579–0051.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for, among other things, preventing the interstate spread of livestock diseases and pests and for eradicating such diseases and pests from the United States when feasible. In connection with this mission, Veterinary Services (VS), Animal and Plant Health Inspection Service, prohibits or restricts the interstate movement of livestock that have, or have been exposed to, certain diseases.

When such livestock are allowed to be moved interstate, the animals must normally be moved to slaughter and be accompanied by a "Permit for Movement of Restricted Animals," also known as VS Form 1–27. Use of this form, which is completed by specified personnel at the points of origin and destination, provides documentation that the animals were not diverted from their destination, which could result in the spread of disease.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: State field personnel, accredited veterinarians, meat inspectors, animal health technicians, and others, including owners of cattle, swine, horses, sheep, and goats.

Estimated annual number of respondents: 4,000.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 12,000.

Estimated total annual burden on respondents: 996 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of May 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–7456 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Disaster Assistance (General)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection with revision in support of the Disaster Assistance program. The information collection is needed to identify disaster areas and establish eligible FSA counties for the purpose of making emergency loans available to eligible and qualified farmers and ranchers. The total burden hours have been revised to reflect the number of Secretarial requests for natural disaster assistance during the 2005 crop year.

DATES: Comments must be received on or before July 17, 2006, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Diane Sharp, Director, Production, Emergencies and Compliance Division, to Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments also may be submitted by e-mail to: *Diane.Sharp@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Helen Smith, Section Head, Emergency and Preparedness and Program Branch, (202) 720–6601.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Disaster Assistance Program (General).

OMB Number: 0560–0170.

Expiration Date of Approval: November 30, 2006.

Type of Request: Extension with revision.

Abstract: The information collection is necessary for FSA to effectively administer the regulations relating to identifying disaster areas for the purpose of making emergency loans available to qualified and eligible farmers and ranchers who have suffered weather-related physical or production losses or both in such areas. Before emergency loans can become available, the information needs to be collected to determine if the disaster areas meet the criteria of having a qualifying loss in order to be considered as an eligible County.

Estimated of Burden: Average 0.483 hour per response.

Type of Respondents: Farmers and ranchers.

Estimated Annual Number of Respondents: 1,758.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 849.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 11, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–7483 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Florence, OR. The purpose of the meeting is to Review RAC FY07 Business, Information Share, Public Forum and 2007 Project Review/ Recommendations.

DATES: The meeting will be held June 8, 2006, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Community Baptist Church, 4590 Highway 101, Florence Oregon 97439.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/928–7085 or write to Forest Supervisor, Siuslaw national Forest, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin before 2007 project review.

Dated: May 9, 2006.

Josè Linares,

Forest Supervisor.

[FR Doc. 06–4602 Filed 5–16–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ruo Ling Wang, Beijing Rich Linscience Electronics Company, and Jian Gou Qu Order Making Order Denying Export Privileges of Ruo Ling Wang Applicable to Related Person Jian Gou Qu

In the Matter of: Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086; Respondent: Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086; and Jian Gou Qu, currently incarcerated at: Inmate Number 07512–089, MCC Chicago, Metropolitan Correctional Center, 71 West Van Buren Street, Chicago, IL 60605, and with an address at: No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086; Related Persons

Pursuant to Sections 766.25(h) and 766.23 of the Export Administration Regulations[1] ("EAR"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I make the Denial Order that was imposed against the individual Ruo Ling Wang ("Wang") on April 18, 2006 (71 FR 23896, April 25, 2006) applicable to Jian Gou Qu ("Qu"), currently incarcerated at MCC Chicago, Metropolitan Correctional Center, 71 West Van Buren Street, Chicago, IL 60605, and with an address at No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, (hereinafter, the "Related Person"), as a person related to Wang.

Section 766.23 of the EAR provides that "[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade

[1] The EAR are currently codified at 15 CFR parts 730–774 (2006).

or business. Orders that may be made applicable to related persons include those that deny or affect export privileges * * *" 15 CFR 766.23(a).

On April 18, 2006, I issued an Order pursuant to section 11(h) of the Export Administration Act of 1970, as amended (currently codified at 50 U.S.C. app. Sections 2401–2420 (2000)) ("Act")[2] and section 766.25 of the EAR denying the export privileges under the Regulations of Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 for 10 years and naming Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 as a Related Person. The Order was based on Wang's conviction of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA") for making unlicensed exports of electronic components and semiconductor chips to the People's Republic of China.

BIS has presented evidence that indicates that Qu is related to Wang by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this individual to the Wang Denial Order in order to avoid evasion of that Order. The basis for naming Qu to the Wang Denial Order include the facts that Qu is Wang's husband and Wang and Qu are the owners of Beijing Rich Linscience Electronics Company ("BRLE") and BRLE was receiving illegal exports from the United States of electronic components and semiconductor chips, items subject to the EAR.

On April 19, 2006, I gave notice to Qu, by Federal Express and registered mail at his address in Chicago, Illinois, (Inmate Number 07512–089, MCC Chicago, Metropolitan Correctional Center, 71 West Van Buren Street, Chicago, IL 60605) notifying Qu that his export privileges under the EAR could be denied for up to 10 years as BIS believes that Qu is related to Wang and adding him to the Wang Denial Order is necessary to prevent evasion.

Having received no response from Qu, I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to name Qu as a related person to the Wang Denial Order, thereby denying Qu's export privileges from 10 years from the date of Wang's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or EAR in which Qu had an interest at the time of Wang's conviction. The 10-year denial period ends on May 2, 2015.

Accordingly, it is hereby ordered

First, that having been provided notice and opportunity for comment as provided in Sections 766.25 and 766.23 of the Export Administration Regulations (the "Regulations"), the following individual, Jian Gou Qu, currently incarcerated at MCC Chicago, Metropolitan Correctional Center, 71 West Van Buren Street, Chicago, IL 60605 and with an address at No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, has been determined to be related to Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Wang applicable to Qu in order to prevent evasion of the Wang Denial Order.

Second, that the denial of export privileges described in the Wang Denial Order, which was published in the **Federal Register** on April 25, 2006 at 71 FR 23896, shall be made applicable to Qu until its expiration on May 2, 2015, as follows:

I. Jian Gou Qu, currently incarcerated at MCC Chicago, Metropolitan Correctional Center, 71 West Van Buren Street, Chicago, IL 60605 and with an address at No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, and when acting for or on behalf of Qu, his officers, representatives, agents, or employees (collectively, "Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Denied Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), has continued the Regulations in effect under the IEEPA.

of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order is effective immediately and shall remain in effect until May 2, 2015.

Sixth, that this Order shall be published in the **Federal Register** and a copy served on the Related Person.

Dated: May 5, 2006.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 06–4497 Filed 5–16–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–817)

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has conducted an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand produced and/or exported by Sahaviriya Steel Industries Public Company Limited ("SSI"), Nakornthai Strip Mill Public Co., Ltd. ("Nakornthai"), and G Steel Public Company Limited ("G Steel")[1] (formerly Siam Strip Mill Public Co., Ltd.). The period of review ("POR") is November 1, 2003, through October 31, 2004. Based on our analysis of comments received, these final results remain unchanged from the preliminary results. The final results are listed below in the "Final Results of Review" section.

EFFECTIVE DATE: May 17, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone (202) 482–0193 and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2005, the Department published the preliminary results and intent to revoke and partial rescission of its administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand. *See Certain Hot–Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part*, 70 FR 73197 (December 9, 2005) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On December 22, 2005, United States Steel Corporation (petitioner) requested that the Department issue a questionnaire to SSI requesting certain financial information for the post–POR period. On January 4, 2006, the Department contacted Skadden, Arps, Slate, Meagher & Flom LLP, counsel to petitioner, and requested that petitioner provide a more thorough explanation for its December 22, 2005, request for certain post–POR financial information from SSI. *See* the Department's Memorandum to the File from Stephen Bailey, International Trade Compliance Analyst, dated January 5, 2006. On January 6, 2006, petitioner and Nucor Corporation (Nucor), a domestic interested party in this administrative review, submitted a joint letter providing a detailed explanation as to the relevance of the financial information petitioner requested the Department collect from SSI. On January 13, 2006, the Department requested SSI submit certain financial information for the post–POR period, which SSI did on January 18, 2006.

On January 17, 2006, SSI submitted a letter on the record of the 2004–2005 administrative review[2] requesting that the 2004–2005 administrative review be rescinded with respect to SSI because certain entries into the U.S. during the 2004–2005 POR were actually sold pursuant to sales in the 2003–2004 POR, and these sales have already been examined and verified by the Department in the 2003–2004 administrative review. On January 18, 2006, SSI submitted a letter on the record of the 2003–2004 administrative review requesting certain information contained in its January 17, 2006, letter to the Department be placed on the record of the 2003–2004 administrative review. Specifically, SSI requested that information regarding its meaningful participation in the market for the 2004–2005 administrative review and the date of entry for merchandise entered during the 04–05 administrative review be placed on the record of the 2003–2004 administrative review. *See* SSI's January 18, 2006, letter to the Department at page 2 and exhibit A. On January 25, 2006, the Department issued a memorandum from Richard Weible, Office Director, to the File reiterating the Department's practice of conducting administrative reviews based on entries of subject merchandise during the POR. Furthermore, we explained that we intended to exclude sales that entered in the 04–05 administrative review period from the 03–04 administrative review. On January 27, 2006, SSI submitted a letter objecting to the Department's intention to exclude certain sales from the 03–04 administrative review.

On January 25, 2006, petitioner and Nucor filed joint comments on SSI's post–POR financial information submission. On January 31, 2006, SSI filed rebuttal comments to petitioner's and Nucor's January 25, 2006, comments regarding its post–POR financial information.

On February 7, 2006, the Department received case briefs from petitioner, Nucor and SSI. On February 10, 2006, SSI submitted a letter claiming that Nucor had submitted new factual information in its February 7, 2006, case brief. On February 13, 2006, the Department issued a letter to Nucor requesting that certain new factual information be edited from its case brief. On February 14, 2006, petitioner, Nucor and SSI submitted rebuttal briefs, and Nucor submitted a revised case brief excluding the new factual information as requested by the Department.

Partial Rescission

In our *Preliminary Results*, we announced our preliminary decision to rescind the review with respect to Nakornthai and G Steel because these companies had no entries of hot–rolled steel from Thailand during the POR. *See Preliminary Results*. We have received no new information contradicting this decision. Therefore, we are rescinding the administrative review with respect to Nakornthai and G Steel.

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain hot–

[1] The Department notes that it erroneously referred to G Steel as "G Street Public Company Limited" in the Preliminary Results.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005).

rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) Iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

Society of Automotive Engineers' (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

Ball bearing steels, as defined in the HTSUS.

Tool steels, as defined in the HTSUS.

Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

ASTM specifications A710 and A736.

USS abrasion–resistant steels (USS AR 400, USS AR 500).

All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

The Department has received case and rebuttal briefs from petitioner, Nucor and SSI. All case and rebuttal briefs for the final results are addressed in the memorandum "Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from Thailand" from Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, to David M. Spooner, Assistant Secretary, Import Administration, dated May 8, 2006 (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that petitioner, Nucor, and SSI have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum, which is on file in the Department's Central Records Unit, located at 14th Street and Constitution Avenue, NW, Room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Import Administration Web site at *http://ia.ita.doc.gov/* under the heading **Federal Register** Notices. The paper copy and electronic version of the Decision Memorandum are identical in content.

The Department notes that SSI included in its rebuttal briefs a response to certain allegations of affiliation made by Nucor in its original February 7, 2006, case brief. Because the Department ultimately rejected Nucor's case brief with respect to its affiliation argument as new factual information, SSI's rebuttal argument will not be considered. See the Department's February 13, 2006, letter to Nucor rejecting its affiliation argument as new factual information.

Changes Since the Preliminary Results

Based on our analysis of comments received and findings at verification, we made the following changes from the preliminary results:

(1) We excluded certain United States sales form the analysis that entered after the POR;

(2) We adjusted SSI's general and administrative (G&A) to exclude

revenue earned on the sale of scrap to offset G&A expenses, excluded the cost of scrap from the denominator of both the G&A and financial expense ratio calculations, and excluded revenue earned from the early redemption of a bond from the numerator of the G&A expense ratio calculation;

(3) We adjusted our computer programs to reflect a single level of trade in the home market and the United States market; and

(4) We excluded certain costs associated with SSI's hot–finishing line to avoid double counting in the cost calculation.

Final Results of Review

We determine that the following dumping margins exist for the period November 1, 2003 through October 31, 2004:

Manufacturer/Exporter	Margin (Percent)
SSI	0.00

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930 ("the Act"), and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Notice of Policy Concerning Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). Antidumping duties for the rescinded companies, Nakornthai and G Steel, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) Because the antidumping duty order on certain hot–rolled carbon steel flat products is being revoked with respect to SSI, no deposit will be required; (2) for merchandise exported by producers or exporters not covered in this review but covered in the investigation, the cash deposit rate will continue to be the company–specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or the investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 3.86 percent, the "all others" rate established in the less–than-fair–value investigation (66 FR 49622, September 28, 2001). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 8, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Revocation
Comment 2: Excluded Sales
Comment 3: Calculation of General and Administrative and Interest Expenses
Comment 4: Level of Trade
Comment 5: Variable Cost of Manufacture

[FR Doc. E6–7505 Filed 5–16–06; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Petroleum Wax Candles from the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Initiation of Anticircumvention Inquiry on Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China

SUMMARY: In response to a request from the National Candle Association (NCA), the Department of Commerce (the Department) is initiating an anticircumvention inquiry pursuant to section 781(a) of the Tariff Act of 1930, as amended, (the Tariff Act) to determine whether certain imports of molded or carved articles of wax from the People's Republic of China (PRC) are circumventing the antidumping duty order on petroleum wax candles from China.

EFFECTIVE DATE: May 17, 2006.

FOR FURTHER INFORMATION CONTACT: Angela Strom or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: 202–482–2704 and 202–482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2005, the NCA requested that the Department conduct an anticircumvention inquiry pursuant to section 781(a) of the Tariff Act to determine whether candles assembled in the United States from molded or carved articles of wax (wax forms) from the PRC are circumventing the antidumping duty order on petroleum wax candles from China. *See Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986) (Candles Order). NCA alleges that the molded or carved articles of wax from China are essentially wickless wax candles. NCA maintains that producers in China are shipping wickless wax forms to the United States, with or without a pre–drilled hole in the center, for final assembly of the candle through insertion of a wick and clip assembly. Such assembly in the United States, NCA avers, constitutes circumvention of the order on petroleum wax candles from the PRC. See Request for Determination of Circumvention - Wickless Wax Candles Petroleum Wax Candles from the People's Republic of China (A–570–504) dated December 14, 2005 (NCA Request). No interested parties provided comment on NCA's request.

Scope of the Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers. The products were classified in the original investigation under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes (2006) (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding remains dispositive. *See Candles Order; see also Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

Scope of the Inquiry

The products covered by this inquiry are certain scented or unscented petroleum wax forms presently classified under United States HTSUS No. 9602.00.40. The wax forms are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers, whether or not having pre–drilled wick holes. The wax forms are complete wax candles other than the absence of the wick and are of the same class or kind as the candles subject to the *Candles Order*. The wax forms are further assembled in the United States by a minor hole drilling process, simple wick and clip insertion or both; the final assembled wax candles are identical to those candles subject to the *Candles Order* presently classified under HTSUS No. 3406.00.00. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding remains dispositive.

Initiation of Anticircumvention Inquiry:

Applicable Statute

Section 781 of the Tariff Act addresses circumvention of antidumping or countervailing duty orders. With respect to merchandise assembled or completed in the United States, section 781(a)(1) provides that if (A) The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from part or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise, then the Department may include within the scope of the order the imported parts or components produced in the foreign country used in the completion or assembly of the merchandise in the United States.

In determining whether the process of assembly or completion in the United States is minor or insignificant, section 781(a)(2) directs the Department to consider: (A) The level of investment; (B) the level of research and development; (C) the nature of the production process; (D) the extent of production facilities and (E) whether the value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. Section 781(a)(3) sets forth the factors to consider in determining whether to include parts or components in an antidumping duty order. The Department shall take into account: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States; and (C) whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order.

With respect to section 781(a) of the Tariff Act, NCA provided the following evidence with respect to the listed criteria:

Section 781(a)(1)(A): Merchandise of the Same Class or Kind

NCA maintains that the wickless wax forms, having undergone final assembly in the United States, are identical to the candles covered by the Candles Order. NCA submitted photographs of a completed petroleum wax candle with a label stating the wax was "Hand Poured in China" while the candle was "Assembled in U.S.A." *See* NCA Request at Exhibit 3. NCA also identified certain importers requesting customs tariff classification rulings for articles of wax with a hole drilled directly through the center, but not containing a wick. Some rulings indicated the wax articles are to be further processed into candles by, *e.g.*, "drilling a hole when needed, adding wicks, dipping, polishing, labeling and packaging." *See* NCA's April 4, 2006 submission at 14.

Section 781(a)(1)(B): Completion or Assembly of Merchandise in the United States Using Foreign Parts or Components

NCA alleges the wickless wax forms imported from China account for virtually all of the finished candle's weight and total cost. NCA argues that the only other component, the wick and clip assembly added in the United States, is a minor portion of the final product, both in terms of weight and cost of materials for the candle. NCA alleges that in some instances, the wax forms are imported with a wick hole pre–drilled ready for assembly in the United States. In other cases, the drilling may be done after importation. Wick and clip assemblies can be shipped with the wax forms, or sourced separately. In either scenario, NCA insists, the requirements of section 781(a)(1)(B) are satisfied.

Section 781(a)(1)(C): Minor or Insignificant Assembly or Completion

NCA argues that production of the wax form comprises almost the entirety of the production process for a finished candle and that the final assembly or completion in the United States of a candle, through drilling a hole and inserting the wick and clip assembly, is minor and insignificant. Although NCA is not able to provide specific information from the Chinese industry on the production of the wax forms, NCA argues that the Department can look to the U.S. domestic industry for general information on the production process of a candle. According to NCA, the process of inserting a wick in the United States is minor or insignificant, whether measured qualitatively or quantitatively.

NCA addresses in turn each of the five factors set forth at section 781(a)(2) of the Tariff Act:

A. Level of Investment in the United States

NCA argues that the level of investment in the United States is minor compared to the level of investment in China. NCA explains that the production of the wax form in the PRC requires specialized capital equipment and trained labor. NCA states that the production of wax forms requires investment in specialized equipment, including large vats in which to melt wax slabs, a steam boiler, as well as molds to create the wax forms. NCA also states that investment in trained labor is necessary for production of the wax form, including the manual blending of dyes and perfumes, individual removal of the wax forms from the molds, and hand polishing and beveling of the forms. In comparison, NCA argues that insertion of the wick and clip assembly in the United States requires no investment in production facilities or equipment. NCA asserts that such assembly can be done by hand without any specialized equipment. Even if a firm opts to invest in equipment to automate the hole drilling and wick and clip assembly process in the United States, total investments would nonetheless remain minor compared to the level of investment required in the PRC to produce the wax forms. In support of its argument, NCA provided data based on domestic producers' actual experience which indicate the hole drilling and wick and clip assembly process constitutes a very minor percentage of the total manufacturing cost of the finished candle. *See* NCA Request at Exhibit 4. NCA claims domestic producers report that even when these processes are highly automated, the level of investment is a minor percentage of the total investment in candle production facilities and equipment. Thus, NCA argues that the majority of the required level of investment is in China and the level of investment in the United States is minor.

B. The Level of Research and Development in the United States

NCA asserts the level of research and development is concentrated in the candle production facilities in the PRC. According to NCA, the bulk of product research and development is centered on new shapes, designs, colors, scents, wax types and combinations and wick types. NCA argues that wick hole drilling and wick and clip assembly techniques are mature production processes, requiring a "negligible" portion of research and development expenses. *See* NCA Request at 20. NCA suggests *the Department's findings in the Anti–Circumvention Inquiry of Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) are apposite because in that proceeding, the Department found repackaging of pasta into retail size containers to be a "technically mature" production process requiring very little research and development. *See* NCA Request at 20, n. 20, citing *Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46574 (August 6, 2003).

C. Nature of the Production Process in the United States

NCA contrasts the minor finishing operations performed in the United States to the major production, testing and market research efforts involved in producing the wickless wax forms in the PRC. *See* NCA Request at 21. According to NCA, "the process of inserting the wick and clip assembly and, in some cases drilling the wick hole, in the United States is comparatively simple, requiring little in the way of production facilities or specialized equipment." *Id.* at 22. Based on the experience of domestic producers, NCA estimates that the costs of drilling a hole, including labor and overhead, account for a small percentage of the total production process. *Id.* at Exhibit 4. NCA argues that the remaining steps, wick and clip assembly in the United States, are also extremely simple steps requiring neither specialized equipment nor extensive production facilities. NCA again references the cost information from U.S. domestic candle producers, indicating that the cost for wick and clip assembly, inclusive of materials, labor and overhead, accounts for a very small percentage of the total manufacturing cost of a candle. *Id.* Accordingly, even if hole drilling, in addition to the wick and clip assembly, is included as part of the U.S. production process, NCA argues the combined total costs would account for a minor part of the entire candle production process as compared to the production of the wax form in China.

D. Extent of the Production Facilities in the United States

As discussed in the "Level of Investment in the United States" section, *supra* at section A, NCA claims the hole drilling and wick and clip assembly process is simple and requires little in the way of production facilities. NCA argues that the process does not require specialized equipment, and most of the processing and assembly can be done by hand. Accordingly, NCA concludes that the extent of the production facilities in the United States required to assemble finished candles is insignificant.

E. Whether the Value of Processing Performed in the United States Represents a Small Portion of the Value of the Merchandise Sold in the United States

NCA notes publicly available import data do not permit a calculation of the proportion of valued added in the United States. According to NCA, import statistics provide information on the value, but not the quantity, of molded or carved articles of wax; thus, NCA could not determine an average unit value for the imported wax form. However, NCA argues the calculation should more properly look at the value of the final merchandise sold, *i.e.*, the completed candle, which uses the wax form. Relying upon information provided by domestic candle producers, NCA argues that the value of the wick and clip assembly in the United States represents a small proportion of the value of the final completed candle sold in the United States. NCA argues that even including the value of additional U.S. packaging to the calculation, such as cellophane wrap and labeling, the proportional value of U.S. processing remains small when compared to the total value of the candle as sold.

Furthermore, NCA stresses that Congress directed the Department to focus more on the nature of the processing, rather than merely the difference in value between the finished product and the imported parts or

components. NCA Request at 26, n. 32, citing *Hot–Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336, 40347 (July 26, 1999) ("Congress directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components" citing S. Rep. No. 103–412, 81–82 (1994)). Whether examined from the qualitative value or the quantitative nature of processing, NCA argues that the U.S. processing is insignificant in proportion to the value of the merchandise sold in the United States.

Section 781(a)(1)(D): Whether the Value of the Parts or Components Produced in the Foreign Country is a Significant Portion of the Total Value of the Merchandise

NCA argues that the value of the imported wax form constitutes not only a significant portion but virtually all of the material cost of the total value of the final assembled candles. *See* NCA Request at 26. As NCA has also claimed some wax forms are imported with the wicks and clip assemblies included, the value of shipments of PRC–origin parts and components would constitute an even greater portion almost all of the total value of the final assembled candle. See NCA Request at Exhibit 5. NCA also suggests that the value of the wax form, a significant portion of the total value of the merchandise in any analysis, is drastically understated since the wax form is not subject to the current 108.30 percent antidumping duty on wax candles. In measuring the value of the imported wax forms, NCA argues, the Department should adjust that value upward to include the amount of antidumping duties which would otherwise be included in the cost of the wax forms.

Section 781(a)(3): Other Factors to Consider

Finally, NCA addresses the three "other factors" the Department must consider as part of an anticircumvention determination based upon assembly or completion in the United States:

Pattern of Trade

NCA notes the patterns of trade from the PRC have shifted noticeably, with an increase in imports of wax forms coupled with a decrease in imports of finished candles. NCA points out the timing of this shift can be traced to the first Customs classification, dated in May 1999, finding that drilled wax forms would be classifiable under HTSUS subheading 9602.00.4000, for "molded or carved articles of wax," rather than subheading 3406.00.0000 for petroleum wax candles. Notably, the subheading for molded and carved articles of wax has a duty rate of 1.8 percent *ad valorem*. Since Customs and Border Protection (CBP) ruled that wax forms would be properly classifiable under item 9602.00.4000, NCA notes, imports of wax forms from the PRC have increased markedly, with a substantial jump in 2005 alone. *See* NCA Request at Exhibit 6.

NCA also argues that since the original investigation, there have been numerous attempts by PRC producers to circumvent the Candles Order, including methods as varied as "massive transshipments through Hong Kong," to a "continuing stream of scope requests," to increased shipments of blended wax candles including palm or vegetable wax. Id. at 3 through 6. According to NCA, these wickless wax forms are subject merchandise that are completed in the United States and NCA alleges they serve no purpose other than to undergo minor further processing and assembly into a complete candle through the insertion of the wick in the United States. *Id.* at 7.

Relationship between Manufacturer or Exporter and U.S. Assembler

NCA states it is not aware of and unable to ascertain whether any relationship exists between the U.S. importers and Chinese producers of wax forms.

Increase in Imports of the Parts or Components

As discussed in the "Pattern of Trade" section above, NCA asserts that imports of wax forms have increased since 1999, with the most notable increases in 2004 and 2005. *See* NCA Request at Exhibit 6. NCA suggests that as successive attempts by Chinese producers to circumvent the Candles Order have been closed down, Chinese producers have increasingly relied on imports of wax forms from the PRC to the United States. NCA points out that the value of imports of wax forms from the PRC nearly tripled from 2003 to 2004, and that imports in 2005 increased an additional 65 percent over 2004 levels. *See* NCA Request at 29. Therefore, there has been an increase in the import into the United States of wickless wax forms from the PRC after the investigation was initiated in 1985.

Analysis

Based on our analysis of NCA's Request, as well as the record developed by the Department to date, as discussed further below, we determine that a formal anticircumvention inquiry is warranted with respect to imports of wax forms for completion into petroleum wax candles by certain companies identified by petitioner. NCA has presented information indicating that candles sold in the United States, which were assembled or completed in the United States from wax forms imported from the PRC, are of the same class or kind of merchandise as that subject to the antidumping duty order.

With regard to the completion or assembly of the merchandise in the United States using the wax forms imported from the PRC, NCA has also presented information documenting an increase in imports of the wax forms that may be used in the assembly of finished candles within the United States. NCA also provided evidence that the process of assembly or completion in the United States is minor or insignificant, as NCA discussed the relevant statutory factors as applied to the final assembly of candles through wick and clip assembly. Although NCA did not have direct and specific information from U.S. assemblers, it was able to provide information based on the actual experience of its members, U.S. domestic candle producers, that provided significant information on wick and clip assembly in particular, and commercial candle production in general.

The Department finds the information provided by NCA relating to the level of investment, research and development, the nature of the production process in the United States, the extent of production facilities in the United States, and whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States all supports its request for the Department to initiate an anticircumvention inquiry. With respect to whether the value of the parts or components produced in the PRC, *i.e.*, the wax forms, is a significant portion of the total value of the candle, NCA again was able to provide information from the domestic candle industry indicating the value of the wax form is a significant portion of the total value of the finished candle. Finally, NCA provided evidence on the changing pattern of trade and increase in imports of wax forms, a part or component of the finished candle, in support of its request

for the initiation of an anticircumvention inquiry.

Accordingly, the Department is initiating a formal anticircumvention inquiry concerning the antidumping duty order on petroleum wax candles from the PRC, pursuant to section 781(a) of the Tariff Act. Based upon the information included in NCA's Request and its April 4, 2006 submission, as well as our analysis of relevant CBP import data, the Department is initiating this anticircumvention inquiry with respect to the following firms: DECOR–WARE, Inc., A&M Wholesalers, Inc., Albert E. Price, and Northern Lights Enterprises.[1] *See* Memorandum to the File, dated May 11, 2006 (placing business proprietary CBP data on the record of this proceeding). In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination that imports of wax forms and other candle components are circumventing the order on petroleum wax candles from the PRC, we will instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise subject to this inquiry from the date of initiation.

The Department notes that at this time it is initiating this inquiry solely with respect to the four firms listed above. Based on the record developed to date, the Department does not have sufficient evidence that other firms mentioned by NCA are engaging in the activities that NCA alleges are circumventing the Candles Order. *See* Memorandum to the File, dated May 11, 2006. However, if within 45 days of the date of this initiation, the Department receives sufficient evidence that other importers are importing wax forms for completion into finished candles in the United States, we will consider examining any such additional importers.

The Department will establish a schedule for questionnaires and comments on the issues. Pursuant to Section 781(f) of the Tariff Act, the Department intends to issue its final determination within 300 days from the date of signature of this initiation.

This notice is published in accordance with section 781(a) of the Tariff Act and 19 CFR 351.225.

Dated: May 11, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7504 Filed 5–16–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] Identified as Decoware Inc., A & M Wholesalers Inc., Albert E. Price Inc, and Northern Lights Enterprises as the importers on record in CBP data.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–821)

Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 10, 2006, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on certain hot–rolled carbon steel flat products from India for the period January 1, 2004, through December 31, 2004. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Flat Products from India*, 71 FR 1512 (January 10, 2006) (*Preliminary Results*). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, the Department has revised the net subsidy rate for Essar Steel Ltd. (Essar), the producer/exporter of subject merchandise covered by this review. For further discussion of our analysis of the comments received for these final results, *see* the May 10, 2006, Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, concerning the Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India (HRC Decision Memorandum 2004). The final net subsidy rate for Essar is listed below in "Final Results of Review."

EFFECTIVE DATE: May 17, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Preeti Tolani, Import Administration, AD/CVD Operations, Office 3, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers only Essar. The review covers the period January 1, 2004, through December 31, 2004, and 11 programs. On January 10, 2006, the Department published in the **Federal Register** its preliminary results. *See Preliminary Results* at 71 FR 1512. We invited interested parties to comment on the results. On February 21, 2006, we received case briefs from both petitioner [1] and the respondent, Essar. On February 28, 2006, we received rebuttal briefs from petitioner and Essar. On March 2, 2006, a public hearing was held at the Department of Commerce with respect to Essar.

Scope of Order

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high–strength low–alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) Iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2

[1] Petitioner in this case is United States Steel Corporation.

percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the HRC Decision Memorandum 2004, which is hereby adopted by this notice. A list of the issues contained in that decision memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in that public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building. In addition, a complete copy of the HRC Decision Memorandum 2004 can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the decision memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an ad valorem net subsidy rate for Essar. For the period of review (POR), we determine the net subsidy rate to be 4.56 percent *ad valorem*.

We intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for entries or exports made during the period January 1, 2004, through December 31, 2004. We will instruct CBP, within 15 days of publication of the final results of this review, to collect cash deposits of estimated countervailing duties at 4.56 percent *ad valorem* of the f.o.b. price on all shipments of the subject merchandise from Essar, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigation or the most recently completed administrative review. *See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60200 (December 3, 2001). The "all others" rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: May 10, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I Issues and Decision Memorandum

I. Subsidies Valuation Information

A. Benchmark for Short–Term Loans
B. Benchmark for Long–Term Loans issued up to 2000
C. Benchmark for Long–Term Loans issued in 2001 and 2002
D. Benchmark for Long–Term Loans issued in 2003 and 2004

II. Analysis Of Programs

A. Programs Determined to Confer Subsidies

1. Export Promotion of Capital Goods Scheme (EPCGS)
2. State Government of Gujarat (SGOG) Tax Incentives
3. Bombay Relief Undertaking (BRU) Act
4. Sale of High–Grade Iron Ore for

[FR Doc. E6–7506 Filed 5–16–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031606A]

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit; Extension of Comment Period

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

ACTION: Notice; scoping meetings; extension of comment period and revision.

SUMMARY: This document contains an extension to the comment period and revisions to the time for the first of two meetings for a notice of intent to prepare an environmental impact statement for the proposed issuance of an incidental take and scoping meetings. The original notice was published March 27, 2006.

DATES: We must receive written comments on alternatives and issues to be addressed in the EIS by June 14, 2006. We will hold public scoping meetings on:

Tuesday, June 6, 2006, at East Portland Community Center, 740 SE 106th Avenue, Portland, OR from 5 p.m. to 7 p.m., and on Wednesday, June 7, 2006, at Portland City Hall, Lovejoy Room, 1221 SW 4th Avenue, Portland, OR from 5 p.m. to 7 p.m.. We will accept oral and written comments at these meetings.

FOR FURTHER INFORMATION CONTACT: Joe Zisa, USFWS, (360)231–6961 or Ben Meyer, NMFS, (503)230–5425.

SUPPLEMENTARY INFORMATION: On March 27, 2006, NMFS published a notice of scoping meetings. Accordingly, this document is extending the comment period and revisiong the time for the first of two meetings [see **DATES**]. All other information contained in the original document has not been changed.

Dated: May 11, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7498 Filed 5–16–06; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Customer Input—Patent and Trademark Customer Surveys.

Form Number(s): None.

Agency Approval Number: 0651–0038.

Type of Request: Revision of a currently approved collection.

Burden: 220 hours annually.

Number of Respondents: 1,900 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to complete a telephone survey and 5 minutes (0.08 hours) to complete questionnaires and customer surveys. The questionnaires and customer surveys can be completed on paper and mailed to the USPTO or completed electronically. It takes 5 minutes to complete the surveys, whether they are mailed to the USPTO or completed electronically. This includes the time to gather the necessary information, prepare the form, and submit the completed request.

Needs and Uses: The public uses the telephone and customer surveys and the questionnaires to provide their opinions, suggestions, and comments about the USPTO's services, products, and customer service. Depending on the type of survey, the public can provide their comments on the spot to the interviewer, or complete the survey at their own pace and either mail their responses to the USPTO or submit their responses electronically via a web-based survey. The USPTO uses the data collected from these surveys for strategic planning, allocation of resources, the establishment of performance goals, and the verification and establishment of service standards. The USPTO also uses this data to assess customer satisfaction with USPTO products and services, to assess customer priorities in service characteristics, and to identify areas where service levels differ from customer expectations.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include "0651–0038 copy request" in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 16, 2006, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: May 11, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–7484 Filed 5–16–06; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 2, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4638 Filed 5–12–06; 4:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 9, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4639 Filed 5–12–06; 4:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 16, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4640 Filed 5–12–06; 4:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 23, 2006.

PLACE: 1155 21 St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4641 Filed 5–12–06; 4:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, June 30, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, (202) 418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–4642 Filed 5–12–06; 4:42 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* May 9, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Arkansas

Installation Name: Leroy R. Pond USARC
LRA Name: City of Fayetteville
Point of Contact: Susan B. Thomas, Public Information and Policy Advisor, City of Fayetteville
Address: 113 W. Mountain, Fayetteville, AR 72701
Phone: (479) 575–8330
Installation Name: Rufus N. Garrett Jr. USARC
LRA Name: City of El Dorado Local Redevelopment Authority.
Point of Contact: Toby Anderson, Director, El Dorado Housing Authority

Address: P.O. 486, El Dorado, AR 71731
Phone: (870) 863–4070

California

Installation Name: Desiderio Hall US ARC
LRA Name: City of Pasadena
Point of Contact: Stephanie DeWolfe, Deputy Director, Planning & Development Department, City of Pasadena
Address: 175 North Garfield Avenue, 3rd Floor, Pasadena, CA 91101
Phone: (626) 744–7143

Connecticut

Installation Name: 1st LT John S. Turner USARC
LRA Name: Fairfield High Street Local Redevelopment Authority
Point of Contact: Thomas Bremer, Chair, Fairfield High Street Local Redevelopment Authority
Address: First Selectman's Office, 725 Old Post Road, Fairfield, CT 06824
Phone: (203) 256–3032

Installation Name: AMSA 69
LRA Name: Milford Local Redevelopment Authority
Point of Contact: Robert Gregory, Director of Community Development, City of Milford
Address: City Hall, 110 River Street, Milford, CT 06460
Phone: (203) 783–3230

Installation Name: Middletown USARC
LRA Name: Middletown Base Realignment and Closure Local Redevelopment Authority
Point of Contact: Geen Thazhampallath, Aide to the Mayor, City of Middletown
Address: 245 DeKoven Drive, Middletown, CT 06457
Phone: (860) 344–3401

Delaware

Installation Name: Maj. Robert Kirkwood Memorial USARC
LRA Name: Delaware Redevelopment Authority
Point of Contact: Tom McCarthy, Deputy Director, Delaware Economic Development Office
Address: Carvel State Office Building, 10th Floor, 820 N. French Street, Wilmington, DE 19801
Phone: (302) 577–8477

Hawaii

Installation Name: SFC Minoru Kunieda USARC
LRA Name: Kunieda ARC Local Redevelopment Authority
Point of Contact: William Takaba, Director of Finance, County of Hawaii
Address: 25 Aupuni Street, Hilo, HI 96720
Phone: (808) 961–8234

Illinois

Installation Name: Navy Reserve Center Forest Park
LRA Name: Village of Forest Park
Point of Contact: Anthony T. Calderone, Mayor of Forest Park
Address: 517 Desplaines Avenue, Forest Park, IL 60130
Phone: (708) 366–2323

Installation Name: PFC R.G. Wilson USARC
LRA Name: City of Marion
Point of Contact: Robert L. Butler, Mayor of Marion
Address: 1102 Tower Square Plaza, Marion, IL 62959
Phone: (618) 997–6281

Installation Name: SFC E.L. Copple USARC
LRA Name: City of Centralia
Point of Contact: Grant A. Kleinhenz, City Manager, City of Centralia
Address: 222 South Poplar, Centralia, IL 62801
Phone: (618) 533–7622

Installation Name: SSG R.E. Walton USARC
LRA Name: SSG R.E. Walton U.S. Army Reserve Center Local Redevelopment Authority
Point of Contact: William B. Winter, Police Chief, City of Fairfield
Address: 108 N.W. 7th Street, Fairfield, IL 62837
Phone: (618) 842–2153

Installation Name: Waukegan AFRC
LRA Name: Waukegan Federal Acquisition Committee
Point of Contact: Richard H. Hyde, Mayor of Waukegan
Address: 100 North Martin Luther King Jr. Avenue, Waukegan, IL 60085
Phone: (847) 599–2510

Kentucky

Installation Name: MG Benjamin J. Butler USARC
LRA Name: Louisville/Jefferson Redevelopment Authority
Point of Contact: J. David Morris, Director, Metro Development Authority
Address: 444 South Fifth Street, Suite 600, Louisville, KY 40202
Phone: (502) 574–4140

Installation Name: Paducah Memorial USARC
LRA Name: City of Paducah Local Redevelopment Authority
Point of Contact: David Frost, Grants Administrator, City Planning Department, City of Paducah
Address: P.O. Box 2267, 300 South 5th Street, Paducah, KY 42002–2267
Phone: (270) 444–8690

Installation Name: Paducah USARC #2
LRA Name: City of Paducah Local Redevelopment Authority
Point of Contact: David Frost, Grants Administrator, City Planning Department, City of Paducah
Address: P.O. Box 2267, 300 South 5th Street, Paducah, KY 42002–2267
Phone: (270) 444–8690

Minnesota

Installation Name: Cambridge Memorial USARC
LRA Name: City of Cambridge Local Redevelopment Authority
Point of Contact: Stoney Hiljus, City Administrator, City of Cambridge
Address: 300 Third Avenue Northeast, Cambridge, MN 55008
Phone: (763) 552–3201

Installation Name: Gen. Beebe USARC/ AMSA 111
LRA Name: Faribault Local Redevelopment Authority
Point of Contact: Terry J. Berg, Finance Director, City of Faribault
Address: 208 First Avenue, NW., Faribault, MN 55021–2884
Phone: (507) 333–0345

Mississippi

Installation Name: Naval Station Pascagoula—Main Base
LRA Name: Naval Station Pascagoula Local Redevelopment Planning Authority
Point of Contact: George L. Freeland Jr., Executive Director, Jackson County Economic Development Foundation, Inc.
Address: 3033 Pascagoula Street, P.O. Drawer 1558, Pascagoula, MS 39568
Phone: (228) 769–6263

Installation Name: Naval Station Pascagoula—Lakeside Manor
LRA Name: Naval Station Pascagoula Local Redevelopment Planning Authority
Point of Contact: George L. Freeland Jr., Executive Director, Jackson County Economic Development Foundation, Inc.
Address: 3033 Pascagoula Street, P.O. Drawer 1558, Pascagoula, MS 39568
Phone: (228) 769–6263

Installation Name: Naval Station Pascagoula—Sandhill Landing Family Housing Area
LRA Name: Naval Station Pascagoula Local Redevelopment Planning Authority
Point of Contact: George L. Freeland Jr., Executive Director, Jackson County Economic Development Foundation, Inc.
Address: 3033 Pascagoula Street, P.O. Drawer 1558, Pascagoula, MS 39568
Phone: (228) 769–6263

New Hampshire

Installation Name: Paul A. Doble USARC

LRA Name: City of Portsmouth
Point of Contact: John P. Bohenko, City Manager, City of Portsmouth
Address: 1 Junkins Avenue, Portsmouth, NH 03801
Phone: (603) 610–7202

New Jersey

Installation Name: Fort Monmouth
LRA Name: Fort Monmouth Economic Revitalization Planning Authority
Point of Contact: John G. Donnelly, Policy Advisor, Office of the Governor, State of New Jersey
Address: P.O. Box 001, Trenton, NJ 08625–0001
Phone: (609) 777–0348

Installation Name: Inspector-Instructor Facility, West Trenton
LRA Name: Ewing Township Local Redevelopment Authority
Point of Contact: Anthony P. Carabelli, Jr., Chief Aide to the Mayor, The Township of Ewing
Address: Municipal Complex, 2 Jake Garzio Drive, Ewing, NJ 08628
Phone: (609) 883–2900 ext. 7648

Installation Name: SFC Nelson V. Brittin USARC/S–S
LRA Name: Brittin USARC Local Redevelopment Authority
Point of Contact: Greg Schofield, Chairperson
Address: Municipal Building, 5605 N. Crescent Boulevard, Pennsauken, NJ 08110
Phone: (856) 665–1000

Installation Name: Sgt. J.W. Kilmer/ AMSA 21
LRA Name: Edison Township Council
Point of Contact: Gaetano (Guy) Gaspar
Address: Township of Edison Municipal Complex, 100 Municipal Boulevard, Edison, NJ 08817
Phone: (732) 248–7371

New York

Installation Name: 2LT Glen Carpenter USARC
LRA Name: City of Poughkeepsie Industrial Development Agency
Point of Contact: Edmond G. Murphy, Development Director
Address: Municipal Building, P.O. Box 300, Poughkeepsie, NY 12602
Phone: (845) 451–4046

Installation Name: Amityville AFRC
LRA Name: Town Board of the Town of Babylon
Point of Contact: Ann Marie Jones, Director, Downtown Revitalization Task Force, Town of Babylon
Address: 200 East Sunrise Highway, Lindenhurst, NY 11757–2597
Phone: (631) 957–3013

Installation Name: Fort Tilden USARC
LRA Name: Fort Tilden Redevelopment Authority
Point of Contact: Irving Poy, Director, Planning & Development, Office of Queens Borough President
Address: 120–55 Queens Boulevard—Room 226, Kew Gardens, NY 11424
Phone: (718) 286–3000

Installation Name: Niagara Falls USARC/AMSA 76
LRA Name: Town of Niagara Local Redevelopment Authority
Point of Contact: Steven C. Richards, Town Supervisor
Address: 7105 Lockport Road, Town of Niagara, NY 14304
Phone: (716) 297–2150 ext. 136

Installation Name: Stewart Newburgh USARC
LRA Name: Town of New Windsor Local Redevelopment Authority
Point of Contact: George A. Green, Supervisor, Town of New Windsor
Address: 555 Union Avenue, New Windsor, NY 12553–6196
Phone: (845) 563–4610

North Carolina

Installation Name: Adrian B. Rhodes AFRC
LRA Name: City of Wilmington Local Redevelopment Authority
Point of Contact: Mark Johnson, Chief Code Enforcement Officer, City of Wilmington Community Services Department
Address: P.O. Box 1810, Wilmington, NC 28402–1810
Phone: (910) 341–5820

Installation Name: Jesse F. Niven Jr. USARC
LRA Name: City of Albemarle Local Redevelopment Authority
Point of Contact: Raymond I. Allen, City Manager, City of Albemarle
Address: P.O. Box 190, Albemarle, NC 28002–0190
Phone: (704) 984–9408

Ohio

Installation Name: Navy Marine Corps Reserve Center Akron
LRA Name: City of Akron
Point of Contact: Warren W. Woolford, Director of Planning & Urban Development, City of Akron
Address: Room 401 Municipal Building, 166 South High Street, Akron, OH 44308
Phone: (330) 375–2770

Installation Name: SFC M.L. Downs USARC/AMSA 58
LRA Name: City of Springfield Local Redevelopment Authority
Point of Contact: Heather Whitmore, Planning and Zoning Administrator, City of Springfield
Address: 76 East High Street, Springfield, OH 45502
Phone: (937) 324–7674

Installation Name: Whitehall Memorial USARC
LRA Name: Whitehall Local Redevelopment Authority
Point of Contact: Matthew Shad, Deputy for Administration and Development, City of Whitehall
Address: 360 South Yearling Road, Whitehall, OH 43213
Phone: (614) 338–3103

Oklahoma

Installation Name: Donald A. Roush USARC
LRA Name: Clinton Local Redevelopment Authority
Point of Contact: Grayson Bottom, City Manager, City of Clinton
Address: P.O. Box 1177, 415 Gary Boulevard, Clinton, OK 73601
Phone: (580) 323–0261

Installation Name: Navy Marine Corps Reserve Center Tulsa
LRA Name: AFRC Broken Arrow Local Redevelopment Authority
Point of Contact: David L. Wooden, Assistant City Manager, City of Broken Arrow
Address: 220 South First Street, Broken Arrow, OK 74013
Phone: (918) 259–2400 ext. 5332

Installation Name: Joe A. Smalley USARC
LRA Name: City of Norman Local Redevelopment Authority
Point of Contact: Linda Price, City of Norman
Address: P.O. Box 370, Nonnan, OK 73070
Phone: (405) 366–5439

Pennsylvania

Installation Name: Bloomsburg USARC
LRA Name: Scott Township Local Redevelopment Authority
Point of Contact: Eric C. Stahley, Secretary Treasurer, Scott Township
Address: Scott Township Municipal Building, 350 Tenny Street, Bloomsburg, PA 17815
Phone: (570) 784–9114

Installation Name: Charles E. Kelly Support Facility
LRA Name: Redevelopment Authority of Allegheny County
Point of Contact: J. Patrick Early, Redevelopment Authority of Allegheny County
Address: 425 Sixth Avenue, Suite 800, Pittsburgh, PA 15219
Phone: (412) 350–1061

Installation Name: Germantown Veterans Memorial USARC
LRA Name: City of Philadelphia
Point of Contact: Thomas A. Chapman, Acting Executive Director, Philadelphia City Planning Commission

Address: One Parkway, 13th Floor, 1515 Arch Street, Philadelphia, PA 19102
Phone: (215) 683–4615

Installation Name: James W. Reese USARC
LRA Name: Reese Local Redevelopment Authority
Point of Contact: Richard B. McClintock, Chairperson
Address: 224 Castle Avenue, Upland, PA 19015
Phone: (610) 874–7317

Installation Name: North Penn Memorial USARC
LRA Name: North Penn USARC Redevelopment Authority
Point of Contact: John R. Harris, Chairman, Board of Supervisors, Township of Worcester
Address: 1721 Valley Forge Road, P.O. Box 767, Worcester, PA 19490
Phone: (610) 584–1410

Installation Name: Philadelphia Memorial USARC
LRA Name: City of Philadelphia
Point of Contact: Thomas A. Chapman, Acting Executive Director, Philadelphia City Planning Commission
Address: One Parkway, 13th Floor, 1515 Arch Street, Philadelphia, PA 19102
Phone: (215) 683–4615

Installation Name: Wilson-Kramer USARC
LRA Name: Bethlehem Local Redevelopment Authority
Point of Contact: Tony Hanna, Director of Community and Economic Development, City of Bethlehem
Address: 10 East Church Street, Bethlehem, PA 18018
Phone: (610) 865–7085

Rhode Island

Installation Name: PT Lloyd S. Cooper III USARC
LRA Name: Warwick Local Redevelopment Agency
Point of Contact: Richard Crenca, Principal Planner, Warwick Planning Department, City of Warwick
Address: City Hall Annex, 3275 Post Road, Warwick, RI 02886
Phone: (401) 738–2000 ext. 6292

Installation Name: Quinta-Gamelin USARC
LRA Name: Town Council Local Redevelopment Authority
Point of Contact: Diane C. Mederos, Town Administrator, Town of Bristol
Address: Town Hall, 10 Court Street, Bristol, RI 02809
Phone: (401) 253–7000 ext. 133

Texas

Installation Name: Alice USARC
LRA Name: Alice Local Redevelopment Authority
Point of Contact: Pete Anaya, P.E., City Manager, City of Alice
Address: P.O. Box 3229, Alice, TX 78333
Phone: (361) 668–7210

Installation Name: Boswell Street USARC
LRA Name: San Antonio Local Redevelopment Authority
Point of Contact: Ramiro Cavazos, Director, City of San Antonio Economic Development Department
Address: P.O. Box 839966, San Antonio, TX 78283
Phone: (210) 207–8040

Installation Name: Callaghan Road USARC
LRA Name: San Antonio Local Redevelopment Authority
Point of Contact: Ramior Cavazos, Director, City of San Antonio Economic Development Department
Address: P.O. Box 839966, San Antonio, TX 78283
Phone: (210) 207–8040

Installation Name: Grimes Memorial USARC
LRA Name: Abilene Local Redevelopment Authority
Point of Contact: Larry D. Gilley, City Manager, City of Abilene
Address: P.O. Box 60, Abilene, TX 79604
Phone: (325) 676–6206

Installation Name: Houston USARC #2
LRA Name: City of Houston
Point of Contact: Forest R. "Bob" Christy, Director of Real Estate, Building Services
Department, City of Houston
Address: P.O. Box 1652, Houston, TX 77251
Phone: (713) 247–2639

Installation Name: Houston USARC #3
LRA Name: City of Houston
Point of Contact: Forest R. "Bob" Christy, Director of Real Estate, Building Services
Department, City of Houston
Address: P.O. Box 1652, Houston, TX 77251
Phone: (713) 247–2639

Installation Name: Jules E. Muchert USARC
LRA Name: City of Dallas
Point of Contact: Theresa O'Donnell, Director of Development Services, City of Dallas
Address: 1500 Marilla Street, 5DN, Dallas, TX 75201
Phone: (214) 670–4127

Installation Name: Naval Reserve Center Orange
LRA Name: Orange NRC Local Redevelopment Authority
Point of Contact: Gene Bouillion, Port Director & CEO, Orange County Navigation & Port District
Address: P.O. Box 2410, Orange, TX 77631
Phone: (409) 833–4363

Installation Name: Watts-Guillot USARC
LRA Name: Red River Redevelopment Authority
Point of Contact: Duane Lavery, Executive Director, Red River Redevelopment Authority
Address: 107 Chapel Lane, New Boston, TX 75570
Phone: (903) 223–8741

Installation Name: Wichita Falls USARC
LRA Name: City of Wichita Falls
Point of Contact: David A. Clark, Director of Community Development, City of Wichita Falls
Address: P.O. Box 1431, Wichita Falls, TX 76307
1300 Seventh Street, Wichita Falls, TX 76301
Phone: (940) 761–7451

Installation Name: William Herzog Memorial USARC
LRA Name: City of Dallas
Point of Contact: Theresa O'Donnell, Director of Development Services, City of Dallas
Address: 1500 Marilla Street, 5DN, Dallas, TX 75201
Phone: (214) 670–4127

Vermont

Installation Name: Chester Memorial USARC
LRA Name: Chester Local Redevelopment Authority
Point of Contact: Susan B. Spalding, Town Manager, Town of Chester
Address: P.O. Box 370, Chester, VT 05143
Phone: (802) 875–2173

Installation Name: Courcelle Brothers USARC
LRA Name: Rutland Redevelopment Authority
Point of Contact: Matthew T. Sternberg, Executive Director, Rutland Redevelopment Authority
Address: 103 Wales Street, Rutland, VT 05701
Phone: (802) 775–2910

Washington

Installation Name: PFC Daniel 1. Wagenaar USARC
LRA Name: Port of Pasco
Point of Contact: Randy Heyden, Port of Pasco
Address: 904 E. Ainsworth, Pasco, WA 99301
Phone: (509) 547–3378

West Virginia

Installation Name: 1LT Harry B. Colborn USARC
LRA Name: City of Fairmont Planning Commission

Point of Contact: Jay Rogers, Director of Planning and Development, City of Fairmont
Address: 200 Jackson Street, Fairmont, WV 26554
Phone: (304) 366–6211 ext. 308
Installation Name: Elkins USARC
LRA Name: Elkins-Randolph Local Redevelopment Authority
Point of Contact: Judy A. Guye, Chair, Elkins-Randolph Local Redevelopment Authority
Address: Elkins City Hall, 401 Davis Avenue, Elkins, WV 26241
Phone: (304) 636–1414

Puerto Rico

Installation Name: 1LT Paul Lavergné USARC
LRA Name: Bayamón Lavergné U.S. Army Reserve Center Local Redevelopment Authority
Point of Contact: Eileen Poueymirou Yunqué, Planning Director, Municipality of Bayamón
Address: P.O. Box 1588, Bayamón, PR 00961
Phone: (787) 787–0451

Dated: May 11, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4599 Filed 5–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF THE DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDA); Notice of Closed Meeting

AGENCY: Missile Defense Agency (MDA).

ACTION: Notice of closed meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on June 15–16, 2006 in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will receive classified reports on capability-based acquisition.

FOR FURTHER INFORMATION CONTACT: Col. David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mda.mil*, phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: May 11, 2006.

L.M. Bynum,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 06–4601 Filed 5–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0087]

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Office of the Inspector General (OIG) is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 16, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 10, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–13

SYSTEM NAME:

Travel and Transportation System (June 16, 2003, 68 FR 35636).

REASON:

The records are covered by GSA/GOVT–4 (Contracted Travel Service Program), a government wide system notice.

[FR Doc. 06–4600 Filed 5–16–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–169–000]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

May 10, 2006.

Take notice that on May 1, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains), Post Office Box 1087, Colorado Springs, CO 80944, filed in Docket No. CP06–169–000, a request pursuant to § 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.208 (2005)) and its blanket certificate issued in Docket No. CP03–304–000 for authorization to construct, own and operate 25.07 miles of 12¾-inch pipeline loop beginning at its existing Delta Washco Receipt Point Meter Station, located in Washington County, Colorado and extending northeasterly to a new receipt point interconnection located in Yuma County, Colorado. In addition, Cheyenne Plains proposes to install two electric-driven reciprocating compressor units totaling approximately 1,800 horsepower (ISO), and appurtenances, at approximately Milepost 25+370 of the proposed lateral in Yuma County Colorado. Cheyenne Plains will also install one 6″ and one 4″ ultrasonic meter, with appurtenances, located at Milepost 25+370 of the proposed lateral in Yuma County Colorado. This filing is available for review at the Commission in the Public Reference Room or may 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.

Cheyenne Plains states in its filing, that the proposed Yuma Lateral is being constructed in response to the existing demand for pipeline capacity to transport natural gas from production areas in the Niobrara Reservoir to additional markets. Furthermore, Cheyenne Plains believes that further development of the Niobrara Reservoir gas supply will help replace lost production resulting from disruptions to Gulf of Mexico natural gas production caused by Hurricanes Katrina and Rita; thus helping to alleviate current nationwide gas supply concerns. Cheyenne Plains indicates the proposed Yuma Lateral will prevent the shutting in of natural gas production and help avoid the permanent loss of future production. Finally, Cheyenne Plains states that these proposed facilities will have no significant adverse environmental impacts.

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.

Any questions regarding this application should be directed to Richard Derryberry, Director of Regulatory Affairs Department, Cheyenne Plains Gas Pipeline Company, L.L.C., Post Office Box 1087, Colorado Springs, CO 80944, or call (719) 520–3782.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7492 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–242–000]

Dominion Transmission, Inc.; Notice of Application

May 10, 2006.

Take notice that on May 3, 2006, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA 23219, filed in Docket No. CP06–242–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to drill a new storage injection/withdrawal (I/W) well within the existing limits of the Oakford Storage Complex (Oakford Complex) in Westmoreland County, Pennsylvania at a total estimated cost of approximately $565,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc. 120 Tredegar Street, Richmond, VA 23219, at (804) 819–2877 or fax (804) 819–2064 and e-mail: *Matthew_R_Bley@dom.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated 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 filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

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 at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: May 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7488 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 8, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2823–002.
Applicants: American Cooperative Services, Inc.
Description: American Cooperative Services, Inc. submits its Second Revised Sheet No. 1, et al. to its Rate Schedule No. 1 pursuant to FERC's order 674.
Filed Date: 5/3/2006.
Accession Number: 20060504–0073.
Comment Date: 5 p.m. Eastern Time on Friday, May 12, 2006.

Docket Numbers: ER02–1118–005.
Applicants: Continental Electric Cooperative Service, Inc.
Description: Continental Electric Cooperative Services, Inc. submits its Second Revised Sheet No. 1 et al. to its Rate Schedule No. 1 pursuant to FERC's order 674.
Filed Date: 5/3/2006.
Accession Number: 20060504–0072.
Comment Date: 5 p.m. Eastern Time on Friday, May 12, 2006.

Docket Numbers: ER06–738–001; ER06–739–001.
Applicants: Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, L.L.C.
Description: Cogen Technologies Linden Venture, L.P. and East Coast Power Linden Holding, L.L.C. submits a supplement to its petition filed with the Commission 3/17/06.
Filed Date: 4/28/2006.
Accession Number: 20060505–0030.
Comment Date: 5 p.m. Eastern Time on Monday, May 15, 2006.

Docket Numbers: ER06–758–001.
Applicants: Chambers Cogeneration, Limited Partnership.
Description: Chambers Cogeneration, Limited Partnership supplements its petition filed with the Commission 3/16/06.
Filed Date: 4/28/2006.
Accession Number: 20060505–0026.
Comment Date: 5 p.m. Eastern Time on Monday, May 15, 2006.

Docket Numbers: ER06–902–000.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas and Electric Co. submits modifications to Service Agreement No. 42, Network Integration Transmission Service Agreement with San Francisco Bay Area Rapid Transit District.
Filed Date: 5/2/2006.
Accession Number: 20060505–0029.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 23, 2006.

Docket Numbers: ER06–904–000.
Applicants: New England Power Pool Participants Committee.
Description: New England Power Pool (NEPOOL) Participants Committee submits the signature pages of its New England Power Pool Agreement with Emera Energy U.S. Subsidiary #2, Inc et al.
Filed Date: 5/1/2006.
Accession Number: 20060505–0028.
Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–905–000.
Applicants: Appalachian Power Company.
Description: Appalachian Power Co. submits a cost-based Formula Rate Agreement for Full Requirements Electric Service between American Electric Service Corp. with Craig-Botetourt Electric Cooperative, Inc.
Filed Date: 5/1/2006.
Accession Number: 20060505–0032.
Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–906–000.
Applicants: California Power Exchange Corporation.
Description: California Power Exchange Corp. submits proposed amendments to its Rate Schedule 1 to recover projected expenses for the period 7/21/06 through 12/31/06.
Filed Date: 5/1/2006.
Accession Number: 20060505–0027.
Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–907–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power submits a Master Power Purchase and Sale Agreement with AEP Texas North Company.
Filed Date: 4/28/2006.
Accession Number: 20060505–0024.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–908–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits a Letter Agreement with Stirling Energy Systems Solar One LLC.
Filed Date: 4/28/2006.
Accession Number: 20060505–0023.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–909–000.
Applicants: PNM Resources Operating Companies; Public Service Company of New Mexico; Texas-New Mexico Power Company.
Description: Public Service Co. of New Mexico et al. submits amended sheets to PNM Resources Operating Companies' Joint OATT, FERC Electric Tariff Original Volume 1.
Filed Date: 4/28/2006.
Accession Number: 20060505–0022.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–910–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Co. submits its Interconnection Agreement with Bridgeport Energy LLC, Service Agreement 11.1, Second Revised Volume 4 etc.
Filed Date: 4/28/2006.
Accession Number: 20060505–0021.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–911–000.
Applicants: DC Energy Midwest, LLC.
Description: DC Energy Midwest, LLC submits an amendment to its market-based rate tariff no. 1, effective 6/5/06.
Filed Date: 4/28/2006.
Accession Number: 20060505–0020.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–912–000.
Applicants: DC Energy New York, LLC.
Description: DC Energy New York, LLC submits an application for order authorizing market-based rates, waivers, blanket authorizations and request for expedited action to proposed FERC Electric Tariff, Original Volume 1.
Filed Date: 4/28/2006.
Accession Number: 20060505–0019.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–913–000.
Applicants: DC Energy Mid-Atlantic, LLC.
Description: DC Energy Mid-Atlantic LLC submits an application for order authorizing market-based rates, waivers, blanket authorizations and request for expedited action to its proposed FERC Electric Tariff Original Volume 1.
Filed Date: 4/28/2006.
Accession Number: 20060505–0018.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–914–000.
Applicants: DC Energy New England, LLC.
Description: DC Energy New England, LLC submits an application for order authorizing market-based rates, waivers, blanket authorizations and request for expedited action to FERC Electric Tariff, Original Volume 1.
Filed Date: 4/28/2006.
Accession Number: 20060505–0017.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–915–000.
Applicants: DC Energy, LLC.
Description: DC Energy LLC submits an amendment to its market-based rate electric tariff no. 1.
Filed Date: 4/28/2006.
Accession Number: 20060505–0016.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–916–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc., as agent for Northern State Power Co. et al. submits its Notice of Termination for the Network Integration Transmission Service Agreement et al. with Dairyland Power Coop, effective 5/1/06.
Filed Date: 4/28/2006.
Accession Number: 20060505–0015.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–917–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits revisions to its OATT to incorporate FERC's Small Generator Interconnection Agreement and Procedures etc.
Filed Date: 4/28/2006.
Accession Number: 20060505–0031.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 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 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. E6–7473 Filed 5–16–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

May 10, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER06–926–000
Applicants: ISO New England Inc.; New England Power Pool Participants Committee
Description: ISO New England Inc and New England Power Pool (NEPOOL) Participants Committee submit their First Revised Sheet 8522 et al to FERC Electric Tariff, Schedule 3.
Filed Date: 05/02/2006
Accession Number: 20060508–0173
Comment Date: 5 pm Eastern Time on Tuesday, May 23, 2006

Docket Numbers: ER06–927–000
Applicants: BP Energy Company
Description: BP Energy Co. submits proposed revisions to its market-based rate tariff, First Revised Volume No. 1.
Filed Date: 05/02/2006
Accession Number: 20060508–0174
Comment Date: 5 pm Eastern Time on Tuesday, May 23, 2006

Docket Numbers: ER06–928–000
Applicants: Southern California Edison Company
Description: Southern California Edison Company submits a revised rate sheet no. 54 to rate schedule no. 424, Amended & Restated Eldorado System Conveyance and Co-Tenancy Agreement b/w Nevada Power Co. et al.
Filed Date: 05/02/2006
Accession Number: 20060508–0175
Comment Date: 5:00 pm Eastern Time on Tuesday, May 23, 2006

Docket Numbers: ER06–929–000
Applicants: Granite State Electric Company
Description: Granite State Electric Co. dba National Grid submits a tariff for borderline sales designated as FERC Electric Tariff, Original Volume 2.
Filed Date: 05/02/2006
Accession Number: 20060508–0209
Comment Date: 5 pm Eastern Time on Tuesday, May 23, 2006

Docket Numbers: ER06–930–000
Applicants: Florida Power Corporation
Description: Florida Power Corp. dba Progress Energy Florida submits its annual cost factor updates that implement the contractually authorized changes in certain cost components for interchange services etc.
Filed Date: 05/02/2006
Accession Number: 20060508–0210
Comment Date: 5 pm Eastern Time on Tuesday, May 23, 2006

Docket Numbers: ER06–931–000
Applicants: Black River Macro Discretionary Fund Ltd.
Description: Black River Macro Discretionary Fund Ltd. submits an application for order accepting initial market-based tariff, waiving regulations and granting blank approvals.
Filed Date: 05/03/2006
Accession Number: 20060508–0177
Comment Date: 5 pm Eastern Time on Wednesday, May 24, 2006

Docket Numbers: ER06–932–000
Applicants: Black River Commodity Energy Fund LLC
Description: Black River Commodity Energy Fund LLC submits an application for order accepting initial market-based tariff, waiving regulations, and granting blanket approvals.
Filed Date: 05/03/2006
Accession Number: 20060508–0176
Comment Date: 5 pm Eastern Time on Wednesday, May 24, 2006

Docket Numbers: ER06–933–000
Applicants: ZZ Corporation
Description: ZZ Corporation submits its petition for acceptance of initial tariff, waivers and blanket authority.
Filed Date: 05/03/2006
Accession Number: 20060508–0178
Comment Date: 5 pm Eastern Time on Wednesday, May 24, 2006

Docket Numbers: ER06–934–000
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits an unexecuted Interconnection and Facilities Agreement with the U.S. Department of Defense, to be effective 7/3/06.

Filed Date: 05/04/2006
Accession Number: 20060508–0179
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–935–000
Applicants: The Cincinnati Gas and Electric Company
Description: The Cincinnati Gas and Electric Co. dba Duke Energy Ohio submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume 1, Fayette Tariff.
Filed Date: 05/04/2006
Accession Number: 20060508–0181
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–936–000
Applicants: The Cincinnati Gas and Electric Company
Description: The Cincinnati Gas and Electric Co. dba Duke Energy Ohio submits a notice of cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume 1, Vermillion Tariff.
Filed Date: 05/04/2006
Accession Number: 20060508–0180
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–937–000
Applicants: The Cincinnati Gas and Electric Company
Description: The Cincinnati Gas and Electric Co. dba Duke Energy Ohio submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, Washington Tariff.
Filed Date: 05/04/2006
Accession Number: 20060508–0182
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–938–000
Applicants: The Cincinnati Gas and Electric Company
Description: The Cincinnati Gas and Electric Co. dba Duke Energy Ohio submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume 1, Hanging Rock Tariff.
Filed Date: 05/04/2006
Accession Number: 20060508–0183
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–939–000
Applicants: Mountainview Power Company, LLC
Description: Mountainview Power Co. LLC submits its informational filing for 2005 as required by FERC's 2/25/04 order.
Filed Date: 05/01/2006
Accession Number: 20060501–4003
Comment Date: 5 pm Eastern Time on Monday, May 22, 2006

Docket Numbers: ER06–940–000
Applicants: The Cincinnati Gas and Electric Company
Description: The Cincinnati Gas and Electric Co. dba Duke Energy Ohio submits a Notice of Cancellation of its market-based rate tariff, FERC Electric Tariff, Original Volume 1, Lee Tariff.
Filed Date: 05/04/2006
Accession Number: 20060508–0166
Comment Date: 5 pm Eastern Time on Thursday, May 25, 2006

Docket Numbers: ER06–941–000; ER06–942–000; ER06–943–000
Applicants: Duke Power Company LLC
Description: Duke Power Co. LLC submits a Notice of Cancellation and a Notice of Succession and Duke Energy Shared Services submits a Notice of Succession.
Filed Date: 05/03/2006
Accession Number: 20060508–0167
Comment Date: 5 pm Eastern Time on Wednesday, May 24, 2006

Docket Numbers: ER06–944–000
Applicants: Public Service Company of New Mexico
Description: Public Service Company of New Mexico submits its Amended and Restated San Juan Project Participation Agreement dated 3/23/03 with Tucson Electric Power Co *et al.*
Filed Date: 05/01/2006
Accession Number: 20060509–0047
Comment Date: 5 pm Eastern Time on Monday, May 22, 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 email 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. E6–7485 Filed 5–16–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 10, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2134–004.
Applicants: Just Energy, LLC.
Description: Just Energy, LLC submits its triennial market power analysis and market-based rate compliance filing pursuant to FERC's August 14, 2002 order.
Filed Date: May 1, 2006.
Accession Number: 20060508–0163.
Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER02–2151–002.
Applicants: Just Energy Ohio, LLC.
Description: Just Energy Ohio, LLC submits its triennial market power analysis and market-based rate compliance filings pursuant to FERC's August 20, 2002 order.
Filed Date: May 1, 2006.
Accession Number: 20060508–0155.
Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER03–99–002.
Applicants: Just Energy New York, LLC.
Description: Just Energy New York, LLC submits its triennial market power

analysis and market power analysis and market-based rate compliance filing pursuant to FERC's December 2, 2002 order.

Filed Date: May 1, 2006.

Accession Number: 20060508–0164.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER03–100–002.

Applicants: Just Energy Texas, LLC.

Description: Just Energy Texas, LLC submits its triennial market power analysis and market-based rate compliance filing pursuant to FERC's December 2, 2002 order.

Filed Date: May 1, 2006.

Accession Number: 20060508–0154.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER03–552–012; ER03–984–010.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits its compliance report pursuant FERC's February 22, 2006 order.

Filed Date: April 24, 2006.

Accession Number: 20060426–5039.

Comment Date: 5 p.m. Eastern Time on Monday, May 15, 2006.

Docket Numbers: ER04–23–017.

Applicants: Devon Power LLC; Montville Power LLC and Middletown Power LLC.

Description: Devon Power LLC et al. submit its second annual informational filing pursuant to Paragraph II.5 of the Settlement Agreement filed on November 2, 2004.

Filed Date: March 1, 2006.

Accession Number: 20060303–0171.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER05–1178–003; ER05–1191–003.

Applicants: Gila River Power, L.P.; Union Power Partners, L.P.

Description: Gila River Power, LP et al. submit a notice of non-material change in status relating to their upstream ownership structure pursuant to section 35.27(c) of FERC's Rules and Regulations.

Filed Date: May 1, 2006.

Accession Number: 20060508–0153.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–406–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an informational filing pursuant to the Commission's February 24, 2006 order.

Filed Date: April 25, 2006.

Accession Number: 20060425–5041.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER06–771–001; ER06–772–001; ER06–773–001.

Applicants: ExxonMobil Baton Rouge Complex; ExxonMobil Beaumont Complex; ExxonMobil LaBarge Shute Creek Treating Facility.

Description: ExxonMobil Baton Rouge Complex, et al. submits an supplement to its order accepting initial market based rate tariff and granting certain waivers and blankets approvals filed March 17, 2006.

Filed Date: May 1, 2006.

Accession Number: 20060508–0165.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–901–000; ER06–686–001.

Applicants: DeGreeff DP, LLC.

Description: DeGreeff DP, LLC submits a notice of non-material change in status in compliance with Order 652 and an tariff amendment.

Filed Date: April 25, 2006.

Accession Number: 20060501–0373.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER06–903–000.

Applicants: Alcoa Power Generating Inc.

Description: Aloca Power Generating, Inc submits its First Revised FERC Electric Rate Schedule 13, a transmission service agreement with Cedar Rapids Transmission Co.

Filed Date: April 24, 2006.

Accession Number: 20060508–0161.

Comment Date: 5 p.m. Eastern Time on Monday, May 15, 2006.

Docket Numbers: ER06–918–000.

Applicants: Unitil Power Corp.

Description: Unitil Power Corp submits its statement of all billing transactions under the amended Unitil System Agreement for the period January 1, 2005 through December 31, 2005.

Filed Date: May 1, 2006.

Accession Number: 20060508–0168.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–919–000.

Applicants: Southern Companies.

Description: Southern Company Services, Inc submits an informational filing to true-up the charges that were collected for transmission service under its OATT during calendar year 2005.

Filed Date: May 1, 2006.

Accession Number: 20060508–0207.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–920–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits a true-up of energy rates under contract 14–06–200–2948–A, for the sale, interchange and transmission of electric capacity and energy.

Filed Date: May 1, 2006.

Accession Number: 20060508–0058.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–921–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Fourth Revised Sheet No. 11 of Second Revised Rate Schedule No. 300 with Missouri Joint Municipal Electric Utility Commission to extend its agreement 31 days.

Filed Date: May 1, 2006.

Accession Number: 20060508–0169.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–922–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Co submits a cost-based formula rate agreement for full requirements electric service dated April 24, 2006 with the City of Radford, VA.

Filed Date: May 1, 2006.

Accession Number: 20060508–0208.

Comment Date: 5 p.m. Eastern Time on Monday, May 22, 2006.

Docket Numbers: ER06–923–000.

Applicants: Avista Corporation.

Description: Avista Corp submits its First Revised Sheet 8 et al. to first revised FERC rate schedule no. 184 with Bonneville Power Administration.

Filed Date: April 28, 2006.

Accession Number: 20060508–0170.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–924–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Third Revised Sheet 9 of Rate Schedule 302 with Missouri Joint Municipal Electric Utility Commission.

Filed Date: May 2, 2006.

Accession Number: 20060508–0171.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 23, 2006.

Docket Numbers: ER06–925–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Third Revised Sheet 11 of Rate Schedule 303 with Missouri Joint Municipal Electric Utility Commission.

Filed Date: May 2, 2006.

Accession Number: 20060508–0172.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 23, 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. E6–7486 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2698–033, 2686–032, 2602–007, and 2601–007]

Duke Power Company, LLC; North Carolina; Notice of Availability of Draft Environmental Assessment

May 10, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission) regulations (18 CFR part 380), Commission staff reviewed the applications for new major licenses for the East and West Fork projects, a subsequent license for the Bryson Project, and the application for license surrender for the Dillsboro Project. We prepared a draft combined environmental assessment (EA) on the proposed actions. The East and West Fork and Dillsboro projects are located on the Tuckasegee River in Jackson County, North Carolina. The Bryson Project is located on the Oconaluftee River (a tributary to the Tuckasegee River) in Swain County, North Carolina.

In this draft EA, Commission staff analyze the probable environmental effects of implementing the projects and conclude that approval of the projects, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The draft EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the "eLibrary" link. Additional information about the project is available from the Commission's Office of External Affairs at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676; for TTY call (202) 502–8659.

Any comments on the draft EA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference the specific project and FERC Project No. on all comments. 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.

For further information, please contact Carolyn Holsopple at (202) 502–6407 or at *carolyn.holsopple@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7487 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12447–001]

Fort Dodge Hydroelectric Development Company; Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

May 10, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 12447–001.

c. *Date filed:* March 21, 2006.

d. *Applicant:* Fort Dodge Hydroelectric Development Company.

e. *Name of Project:* Fort Dodge Mill Dam Hydroelectric Project.

f. *Location:* On the Des Moines River in Webster County, Iowa. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Thomas J. Wilkinson, Jr., Fort Dodge Hydroelectric Development Company, 1800 1st Ave., NE Ste. 200, Cedar Rapids, IA 52402; (319) 364–0171.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* July 8, 2006.

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 and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status

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 "eFiling" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *The Fort Dodge Mill Dam Project would consist of:* (1) The existing 342-foot-long by 18-foot-high concrete dam with a 230-foot-long spillway and 5 Tainter gates; (2) a 90-acre reservoir with a normal full pond elevation of 990 feet above mean sea level; (3) an existing 40-foot-wide concrete intake structure with trash rack and stop log guides; (4) an existing powerhouse to contain two proposed turbine generating units with a total installed capacity of 1,400 kW; (5) a proposed 2,400-foot-long, 13.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be about 7,506 MWh.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document: June 2006.

Notice of application is ready for environmental analysis: August 2006.

Notice of the availability of the EA: February 2007.

Ready for Commission's decision on the application: April 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7489 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–073]

Alcoa Power Generating, Inc.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

May 10, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2197–073.

c. *Date Filed:* April 25, 2006.

d. *Applicant:* Alcoa Power Generating, Inc.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The existing project is located on the Yadkin River in Stanly, Davidson, Davie, Montgomery, and Rowan Counties, North Carolina. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Gene Ellis, Licensing and Property Manager, Alcoa Power Generating, Inc., Yadkin Division, P.O. Box 576, NC Highway 740, Badin, NC 28009–0576.

i. *FERC Contact:* Stephen Bowler, (202) 502–6861; or *stephen.bowler@ferc.gov* or Lee Emery, (202) 502–8379; or *lee.emery@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from

the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 25, 2006.

m. This application is not ready for environmental analysis at this time.

n. *The Project Description:* The existing Yadkin River Hydroelectric Project consists of four developments: High Rock, Tuckertown, Narrows, and Falls. The four developments are located on a 38-mile reach of the Yadkin River 60 miles northeast of Charlotte in central North Carolina. The High Rock development is the most upstream, with the Tuckertown, Narrows, and Falls Developments 8.7, 16.5, and 19.0 miles below High Rock respectively. The four Yadkin Developments have a combined installed capacity of 210 megawatts (MW). The project produces an average annual generation of 844,306 megawatt-hours.

The High Rock Development includes the following constructed facilities: (1) A 101-foot-high, 936-foot-long, concrete gravity dam, with a 550-foot-long, gate-controlled spillway; (2) ten, 45-foot-wide (Stoney) floodgates; (3) a 14,400-acre reservoir, with a normal pool elevation of 623.9 feet USGS (U.S. Geological Survey Datum) and a usable storage capacity of 217,400 acre-feet; (4) a powerhouse, integral to the dam, containing three vertical Francis turbine units directly connected to generators with a total installed capacity of 32,190 kW; and (5) appurtenant facilities.

The Tuckertown Development includes the following constructed facilities: (1) A 76-foot-high, 1,370-foot-long, concrete gravity dam with sections of rock fill and earth fill embankment; (2) a 480-foot-long spillway with eleven Tainter gates 35-feet-wide and 38-feet-high; (3) a 2,560-acre reservoir, with a normal pool elevation of 564.7 feet USGS and a usable storage capacity of 6,700 acre-feet; (4) a 204-foot-long powerhouse, integral to the dam, containing three Kaplan turbine units directly connected to generators with a total installed capacity of 38,040 kW; and (5) appurtenant facilities.

The Narrows Development includes the following constructed facilities: (1) A 201-foot-high, 1,144-foot-long, concrete gravity dam with a 640-foot-long main spillway; (2) twenty-two, 25-foot-wide by 12-foot-high (Tainter) flood gates and a trash gate; (3) a 128-foot-long intake structure with four 20-foot by 20-foot openings each with two vertical lift gates; (4) four 15-foot-diameter steel-lined penstocks; (5) a 213-foot-long by 80-foot-wide reinforced concrete and brick powerhouse located 280 feet downstream of the dam; (6) a 430-foot-long bypass spillway with ten Stoney gates (35-feet-wide by 28-feet-high); (7) a 5,355-acre reservoir, with a normal pool elevation of 509.8 feet USGS and a usable storage capacity of 129,100 acre-feet; (8) four vertical Francis turbines directly connected to generators with a total installed capacity of 447,150 kW; and (9) appurtenant facilities.

The Falls Development includes the following constructed facilities: (1) A 112-foot-high, 750-foot-long, concrete gravity dam; (2) a 526-foot-long spillway with a 441-foot section of Stoney gates (33-feet-wide by 34-feet-high), a 71-foot section of Tainter gates (25-feet-wide by 19-feet- and 14-feet-high respectively), and a 14-foot-long trash gate section; (3) a 204-acre reservoir, with a normal pool elevation of 332.8 feet USGS and a usable storage capacity of 940 acre-feet; (4) an 189-foot-long powerhouse, integral to the dam, and containing one S. Morgan Smith vertical Francis turbine and two Allis Chalmers propeller type turbines all directly connected to generators with a total installed capacity of 31,130 kW; and (5) appurtenant facilities.

Alcoa operates the High Rock Development in a store-and-release mode, and the Tuckertown, Narrows, and Falls Developments in a run-of-river mode. The High Rock Development provides storage for the downstream developments, and the Narrows Development provides some storage during low flow conditions and emergencies. The maximum annual drawdown for High Rock is 13 feet, with drawdowns of five feet or less typical during the summer months. At the other developments, the maximum annual drawdown is 3 to 4 feet, with an average daily drawdown of up to 1 to 2 feet. Progress Energy releases a weekly average minimum of 900 cfs into the Yadkin River from the Yadkin Project at the Falls Development.

o. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 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/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Tendering Notice	May 10, 2006.
Additional Study Requests & Interventions	June 25, 2006.
Additional Information Requests (if necessary)	July 2006.
Issue Acceptance Letter	October 2006.
Issue Scoping Document 1 for Comments	November 2006.
Hold Scoping Meetings	January 2007.
Request Additional Information (if necessary)	February 2007.
Issue Scoping Document 2	March 2007.
Notice of Ready for Environmental Analysis	March 2007.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	May 2007.
Commission issues Draft EA or EIS	September 2007.
Comments on Draft EA or EIS & Modified Terms and Conditions	November 2007.
Commission Issues Final EA or EIS	March 2008.
Ready for Commission Decision on the Application	April 2008.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7490 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–030]

Carolina Power & Light Company; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

May 10, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2206–030.

c. *Date Filed:* April 26, 2006.

d. *Applicant:* Carolina Power & Light Company (d/b/a Progress Energy Carolinas, Inc.)

e. *Name of Project:* Yadkin-Pee Dee River Hydroelectric Project.

f. *Location:* The existing project is located on the Yadkin and Pee Dee Rivers in Montgomery, Stanly, Anson, and Richmond Counties, North Carolina. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* E. Michael Williams, Senior Vice President Power Operations, Progress Energy, 410 S. Wilmington Street PEB 13, Raleigh, North Carolina 27062; Telephone (919) 546–6640.

i. *FERC Contact:* Stephen Bowler, (202) 502–6861; or *stephen.bowler@ferc.gov* or Lee Emery, (202) 502–8379; or *lee.emery@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item 1 below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* June 26, 2006.

m. This application is not ready for environmental analysis at this time.

n. *The Project Description:* The existing Yadkin-Pee Dee Project consists of the Tillery Development on the Yadkin River and the Blewett Falls Development on the Pee Dee River. The project has a combined installed capacity of 108.6 MW and an average annual generation of 326 million kilowatt-hours.

The Tillery Development includes the following constructed facilities: (1) A 1,200-foot-long earthen embankment and 1,550-foot-long, concrete gravity structure including a 758-foot-long, 62-foot-high spillway; (2) eighteen, 34-foot-wide by 24-foot-high radial spillway gates; (3) a 14-foot-wide bottom-drop trash sluice gate; (4) a 5,697-acre reservoir, with a normal pool elevation of 277.3 feet NAVD 88 (North American Vertical Datum of 1988) and a usable storage capacity of 84,150 acre-feet; (5) a concrete, indoor-outdoor powerhouse, integral to the dam, containing three Francis turbines and one fixed-blade propeller turbine directly connected to generators with a total installed capacity of 84 MW; (6) a small Francis turbine powering a "house generator" with an installed capacity of 360 kW; and (7) appurtenant facilities.

The Blewett Falls Development includes the following constructed facilities: (1) A 1,700-foot-long earthen embankment and 1,468-foot-long, concrete gravity structure including a spillway with abutments; (2) 4-foot-high, wooden flashboards; (3) a 2,866-acre reservoir, with a normal pool elevation of 177.2 feet NAVD 88 and a usable storage capacity of 30,893 acre-feet; (4) a powerhouse, integral to the dam, containing six pairs of identical S. Morgan Smith hydraulic turbines, each pair with its own penstock and headgate and directly connected to its own generator, for a total installed capacity of 24.6 MW; (5) a 900-foot-long tailrace channel; and (6) appurtenant facilities.

The Tillery Development is operated as a peaking facility. It is licensed for a 22 foot drawdown, but managed for drawdowns of not more than four feet under normal conditions and one foot from April 15 to May 15 to protect largemouth bass spawning. The Blewett Falls Development is operated as a re-regulating facility, smoothing out flows released from the upstream developments. Blewett Falls is licensed for a drawdown of 17 feet, but generally operates with drawdowns of two to four feet. The existing license requires the release of a continuous minimum flow of 40 cfs from the Tillery Development and 150 cfs from the Blewett Falls Development. By regional agreement, a 900 cfs daily flow release from the project is required as part of a drought management protocol.

o. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 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/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Tendering Notice	May 10, 2006.
Additional Study Requests & Interventions	June 26, 2006.
Additional Information Requests (if necessary)	July 2006.
Issue Acceptance Letter	October 2006.
Issue Scoping Document 1 for Comments	November 2006.
Hold Scoping Meetings	January 2006.
Request Additional Information (if necessary)	February 2007.
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Notice of Ready for Environmental Analysis	March 2007.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	May 2007.
Commission issues Draft EA or EIS	September 2007.
Comments on Draft EA or EIS & Modified Terms and Conditions	November 2007.
Commission Issues Final EA or EIS	March 2008.
Ready for Commission Decision on the Application	April 2008.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7491 Filed 5–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

May 11, 2006.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 18, 2006; 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda; *Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

905th—Meeting

REGULAR MEETING

[May 18, 2006; 10 a.m.]

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	RM05–25–000	Preventing Undue Discrimination and Preference in Transmission Service.
	RM05–17–000	Information Requirements for Available Transfer Capability.
E–2	RM04–7–000	Market-Based Rates for Wholesale Sales of Electricity by Public Utilities.
E–3	Omitted.	
E–4	ER99–3491–005	PP&L Montana, LLC.
	ER99–3491–006	
	ER99–3491–007	
	ER99–3491–008	
	ER00–2184–003	PPL Colstrip II, LLC.
	ER00–2184–004	
	ER00–2184–005	
	ER00–2184–006	
	ER00–2185–003	
	ER00–2185–004	
	ER00–2185–005	
	ER00–2185–006	PPL Colstrip I, LLC.
	EL05–124–000	PPL Montana, LLC, PPL Colstrip II, LLC and PPL Colstrip I, LLC.
	EL05–124–001	
	EL05–124–002	
	EL05–124–003	
E–5	ER06–780–000	American Electric Power Service Corporation.
E–6	ER06–800–000	Midwest Independent Transmission System Operator, Inc. and American Transmission Systems, Inc.
E–7	ER06–801–000	Allegheny Energy Supply Company, LLC.

REGULAR MEETING—Continued

[May 18, 2006; 10 a.m.]

Item No.	Docket No.	Company
E–8	Omitted.	
E–9	ER06–777–000	Conectiv Energy Supply, Inc.
E–10	ER06–839–000	Conectiv Energy Supply, Inc.
E–11	Omitted.	
E–12	ER06–840–000	Conectiv Energy Supply, Inc.
E–13	Omitted.	
E–14	ER01–3001–013 ER01–3001–014	New York Independent System Operator, Inc.
E–15	ER05–1475–004	Midwest Independent Transmission System Operator, Inc.
E–16	Omitted.	
E–17	Omitted.	
E–18	EC06–48–000	Westar Energy, Inc., ONEOK Energy Services Company, L.P.
E–19	RM06–14–000	Revisions to Record Retention Requirements for Unbundled Sales Service, Persons Holding Blanket Marketing Certificates, and Public Utility Market-Based Rate Authorization Holders.
E–20	ER05–130–001 ER05–130–003 ER05–150–000	Pacific Gas and Electric Company.
E–21	Omitted.	
E–22	RM06–2–001	Procedures for Disposition of Contested Audit Matters.
E–23	RM05–36–001	Revised Regulations Governing Small Power Production and Cogeneration Facilities.
E–24	Omitted.	
E–25	RM01–10–005	Order on Request for Additional Clarification of Interpretive Order Relating to the Standards of Conduct.
	Hydro	
H–1	P–12657–000 P–12657–001	Electric Plant Board of the City of Augusta, Kentucky.
H–2	P–2342–018	PacifiCorp.
H–3	P–10395–033	Electric Plant Board of the City of Augusta, Kentucky.
H–4	P–2659–023	PacifiCorp.
H–5	P–5633–008 P–6058–014 P–6059–015	Hydro Development Group, Inc.
H–6	P–12498–002 P–12500–002 P–12497–002 P–12499–002 P–12502–002 P–12503–002 P–12504–002	Red Circle Systems Corporation.
	Certificates	
C–1	Omitted.	
C–2	RM06–1–000	Regulations Implementing the Energy Policy Act of 2005: Coordinating the Processing of Federal Authorizations for Applications under Sections 3 and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record.
C–3	CP06–34–000	Transcontinental Gas Pipe Line Corporation.
C–4	Omitted.	
C–5	CP04–68–000 CP04–69–000	Freeport-McMoRan Energy LLC.

Magalie R. Salas,

Secretary.

A free Web cast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 06–4637 Filed 5–12–06; 4:42 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Western Area Colorado Missouri Balancing Authority-Rate Order No. WAPA–118

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–118 and Rate Schedule L–AS3, placing the rate for Regulation and Frequency Response Service (Regulation Service) for the Loveland Area Projects (LAP)—Western Area Colorado Missouri Balancing Authority (Balancing Authority) of the Western Area Power Administration (Western) into effect on an interim basis. This provisional rate will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate. The provisional rate will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment, within the allowable periods.

DATES: Rate Schedule L–AS3 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after June 1, 2006, and will be in effect until the Commission confirms, approves, and places the rate schedule in effect on a final basis through May 31, 2011, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Edward F. Hulls, Operations Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 461–7566, e-mail *hulls@wapa.gov*, or Mr. Daniel Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 461–7442, e-mail *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedule L–AS3 for Regulation Service, as part of Rate Order No. WAPA–106 (69 FR 1723) on December 30, 2003, placing those formula rates into effect on an interim basis effective March 1, 2004. The Commission confirmed and approved the rate schedules on January 31, 2005, under FERC Docket No. EF04–5182–000 (110 FERC 62,084) for service through February 28, 2009.

This provisional rate is to supersede the current Rate Schedule L–AS3 only. Under the existing Rate Schedule L–AS3, the cost for Regulation Service is only applied against entities' auxiliary loads.

The revised rate remains unchanged for the most part; however, provisions have been made for the application of the load-based rate to all intermittent resources within the Balancing Authority. Intermittent generators serving load outside the Balancing Authority will also pay a pass-through cost for Regulating Reserves. Additionally, Western has further defined the measurement for self-provision of Regulation Service. Although self-provision was permitted under the previously approved rate schedule, the terms and conditions have now been specifically defined.

Since June 2003 Western representatives have attended and participated in various technical conferences and workshops with parties interested in the development of this revised rate for Regulation Service, including the Utility Wind Interest Group, Oak Ridge National Laboratory, the National Wind Coordinating Committee, the National Renewable Energy Laboratory, Public Service Company of New Mexico, the Rocky Mountain Electrical League, and the Commission.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00B, and pursuant to 10 CFR part 903 and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–118, the proposed Regulation and Frequency Response Service rate, into effect on an interim basis. The new Rate Schedule L–AS3 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: May 9, 2006.

Clay Sell,

Deputy Secretary.

Deputy Secretary; Order Confirming, Approving, and Placing the Loveland Area Projects—Western Area Colorado Missouri Balancing Authority Regulation and Frequency Response Service Rate Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

ACE: Area Control Error. The instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of Frequency Bias and correction for meter error and automatic time-error correction.

AGC: Automatic Generator Control. Equipment that automatically adjusts generation in a Balancing Authority from a central location, to maintain the Balancing Authority's interchange schedule plus Frequency Bias. AGC may also accommodate automatic inadvertent payback and time-error correction.

Auxiliary Load: An entity's metered load, less its Federal allocation.

Balancing Authority: The responsible entity that integrates resource plans

ahead of time, maintains load-interchange-generation balance within a Balancing Authority area, and supports interconnection frequency in real time.

Capacity: The electric capability of a generator, transformer, transmission circuit or other equipment. It is expressed in kW.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kilowatt-month.

Commission: Federal Energy Regulatory Commission.

CPS2: NERC's Control Performance Standard 2 which requires that the average ACE for at least 90 percent of clock 10-minute periods (6 non-overlapping periods per hour) during a calendar month must be within a specific limit, referred to as L_{10} or "L sub 10".

CRSP: Colorado River Storage Project.

FERC: The Commission (to be used when referencing Federal Energy Regulatory Commission Orders).

FERC Order No. 888: FERC's order promoting open access transmission.

Frequency Bias: A value, usually expressed in megawatts per 0.1 Hertz (MW/0.1 Hz) associated with a Balancing Authority that approximates the Balancing Authority's response to interconnection frequency error.

Fry-Ark: Fryingpan-Arkansas Project.

Intermittent Resource: For purposes of this rate order, an electric generator that is not dispatchable and cannot store its fuel source and therefore, cannot respond to changes in system demand or respond to transmission security constraints.

kW: Kilowatt; a unit of power equal to 1,000 watts.

LAP: Loveland Area Projects.

MW: Megawatt; a unit of power equal to 1,000 kilowatts.

NERC: North American Electric Reliability Council.

P–SMBP: Pick-Sloan Missouri Basin Program.

Provisional Rate: A rate which has been confirmed, approved and placed into effect on an interim basis by the Deputy Secretary.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.

Regulating Reserve: An amount of reserve responsive to automatic generation control, which is sufficient to provide normal regulating margin.

Regulating Reserve Charge: Component of the provisional rate that would charge for the consumption of Regulating Reserves.

Regulation Service: Regulation and Frequency Response Service—An ancillary service necessary to provide for the continuous balancing of resources, generation, and interchange, with load to maintain scheduled interconnection frequency at 60 cycles per second (60 H_z). Regulation Service is accomplished by committing on-line generation through the use of automatic generating control equipment to follow moment-by-moment changes in load.

SBA: Sub-Balancing Authority—An entity serving load inside the Balancing Authority, with sufficient metering and AGC to accommodate minute-to-minute changes between its metered load and generation.

Tariff: Western's Open Access Transmission Tariff.

WACM: Western Area Colorado Missouri Balancing Authority, formerly known as the Western Area Colorado Missouri Control Area.

WALC: Western Area Lower Colorado Balancing Authority.

WECC: Western Electricity Coordinating Council.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The provisional rate will take effect on the first day of the first full billing period beginning on or after June 1, 2006, and will remain in effect until May 31, 2011, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. Western involved interested parties in the rate process in the following manner:

1. Western proposed a rate adjustment for Regulation Service under Rate Order No. WAPA–106, dated June 13, 2003, and subsequently withdrew it on January 12, 2004, to allow more time for public input on intermittent resources and the self-provision of Regulation Service.

2. On March 18, 2004, Western hosted a Technical Information Meeting on Regulation Service in Denver, Colorado. At this meeting, Western presented its findings regarding the withdrawal of the proposed rate. Interested parties gave detailed presentations from their respective viewpoints about Regulation Service.

3. Between May 2004 and May 2005, Western representatives met with officials from Platte River Power Authority, the National Renewable Energy Laboratory, Oak Ridge National Laboratory, and the Center for Resource Solutions to solicit input on and discuss the impacts of the proposed Regulation Service rate.

4. On September 27, 2004, Western held a second Technical Information Meeting on Regulation Service in Denver, Colorado, to discuss the results of the technical work completed since the March 18, 2004, Technical Information Meeting.

5. On June 20, 2005, Western published a Notice of Proposed Rate for Regulation Service in the **Federal Register** (70 FR 35424). Publication of this notice began the formal public process.

6. On July 27, 2005, Western held public information and public comment forums for the proposed Regulation Service rate adjustment in Denver, Colorado.

7. The Consultation and Comment Period for the public process closed on September 19, 2005.

8. Western received two comment letters during the Consultation and Comment Period which were considered in preparing this rate order. One comment letter received on September 27, 2005, while not specifically addressed in this rate order, reiterated the comments of the other two commenters, and therefore, was addressed.

Comments

Written comments were received from the following: Oak Ridge National Laboratory, Oak Ridge, Tennessee, and the National Renewable Energy Laboratory, Golden, Colorado (submitted jointly) Colorado Springs Utilities, Colorado Springs, Colorado.

Representatives of the following organizations made oral comments: Oak Ridge National Laboratory, Oak Ridge, Tennessee Colorado Springs Utilities, Colorado Springs, Colorado Platte River Power Authority, Fort Collins, Colorado.

Project Description

A. Federal Projects Providing Regulation Service

LAP is comprised of two power projects that provide Regulation Service for the WACM Balancing Authority, the Pick-Sloan Missouri Basin Program—Western Division (P–SMBP–WD) and the Fryingpan-Arkansas Project (Fry-Ark). The two projects were operationally and financially integrated for marketing purposes in 1989.

WACM also receives supplemental Regulation Service through a dynamic signal from CRSP generating resources located within the WALC Balancing Authority.

Within WACM, LAP provides service to customers in a three-state area

(Colorado, Wyoming, and Nebraska) over a transmission system of approximately 3,356 miles (5,401 circuit kilometers), and CRSP provides service to customers over a transmission system of approximately 1,422 miles (2,288 circuit kilometers).

Loveland Area Projects

Pick-Sloan Missouri Basin Program—Western Division

The initial stages of the Missouri River Basin Project, under construction since 1944, were authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, Public Law 534, 78th Congress, 2nd session). It was later renamed the Pick-Sloan Missouri Basin Program (P–SMBP) to honor its two principal authors. The P–SMBP encompasses a comprehensive program, with the following authorized functions: flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The Colorado-Big Thompson (C–BT), Kendrick, Riverton, and Shoshone Projects were administratively combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the "Integrated Projects" of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970.

The P–SMBP–WD and the Integrated Projects consist of 19 powerplants: 6 in the C–BT, 6 in the P–SMBP–WD, 2 in the Kendrick Project, 4 in the Shoshone Project, and 1 in the North Platte Project.

Fryingpan-Arkansas Project

Fry-Ark is a transmountain diversion project in central and southeastern Colorado authorized by the Act of August 16, 1962 (Pub. L. 87–590, 76 Stat. 399, as amended by Title XI of the Act of October 27, 1974, Pub. L. 93–493, 88 Stat. 1487). The Fryingpan and Roaring Fork rivers are part of the Colorado River Basin, on the West Slope of the Rocky Mountains. Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River to the Arkansas River on the East Slope of the Rocky Mountains. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation, municipal and industrial water supplies, and hydroelectric power production. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark.

Fry-Ark features five dams and reservoirs, one located on the West Slope of the Rocky Mountains, and four located on the East Slope of the Rocky Mountains.

Fry-Ark's electrical features consist of the Mount Elbert 206–MW Pumped-Storage Power Plant, the Mount Elbert Switchyard, and the Mount Elbert-Malta 230-kV Transmission Line.

Colorado River Storage Project

CRSP was authorized by the Act of April 11, 1956. It consists of four major storage units: Glen Canyon on the Colorado River in Arizona near the Utah border, Flaming Gorge on the Green River in Utah near the Wyoming border, Navajo on the San Juan River in northwestern New Mexico near the Colorado border, and the Wayne N. Aspinall unit (formerly known as Curecanti) on the Gunnison River in west-central Colorado.

Six Federal powerplants with 16 units are associated with the project. The operating capacity of CRSP's 16 generating units was approximately 1,727,000 kW in fiscal year (FY) 2005. CRSP operates its transmission system within two balancing authorities, WACM and WALC.

B. Balancing Authority Characteristics

WACM is operated by Western and has Federal hydroelectric resources from the P–SMBP—WD and Fry-Ark Project. Large non-Federal thermal generators also operate within WACM, but are not under the direct control of Western; *e.g.*, Laramie River Station operated by Basin Electric Power Cooperative, Inc., and Craig Power Plant operated by Tri-State Generation and Transmission Association, Inc.

The thermal generation within WACM represents the larger portion of the Balancing Authority's resource portfolio. However, thermal resources are much slower to respond to Regulation Service requirements, are generally operated near or at maximum generating capacity, and are typically not part of the AGC configuration. Generally, the thermal generation within WACM, as configured, is not considered capable of providing significant Regulation Service.

In FY 2005, the peak load within WACM was measured at about 3,300 MW with approximately 5,300 MW of generation installed. Federal generation capacity is 830 MW or about 15 percent of the total available resource.

Balancing Authority Regulating Constraints

The only units within WACM capable of providing Regulation Service are those with the ability to adjust their output on a moment-to-moment basis. These units are located at Yellowtail, Seminoe, Kortes, Fremont Canyon, Alcova, Estes, Flatiron, and Mount Elbert powerplants. The amount of Regulating Reserve available from LAP powerplants is limited by how many units are available and the prescheduled loading of the units at a given time. Factors influencing unit regulating availability include water schedules, individual generator rough zone constraints, and various environmental constraints. These limitations exist at most LAP powerplants including Yellowtail and Mount Elbert, the two primary powerplants providing Regulation Service.

The relatively small size of some forebays and afterbays also limits the amount of Regulating Reserve available to the system. Additionally, water delivery has priority over generation needs, further restricting the amount of water that can be moved through the generators to provide Regulation Service.

C. Regulation Service Rate Discussion

In April 1998 Western implemented a load-based rate for Regulation Service. This rate has been applied to auxiliary loads within the Balancing Authority since that time. The existing formula rate for Regulation Service is based on an analysis that shows WACM requires 75 MW of Regulating Reserve. As LAP has limited hydroelectric generation available for Regulation Service, it must rely on purchases from others to supplement its own resources. This is important as the Balancing Authority could be the default provider of Regulation Service for 653.5 MW of intermittent resources currently in its interconnection queue. Recognizing its resource limitations, in this rate adjustment Western has included rates designed to properly allocate costs to all users of Regulation Service, including intermittent resources.

The rate for Regulation Service is derived by dividing the revenue requirement by the load plus the installed intermittent generation, if any, within the WACM Balancing Authority requiring Regulation Service. The revenue requirement for Regulation Service consists of: (1) The annualized cost of LAP powerplants providing Regulation Service within the WACM Balancing Authority, (2) the revenue requirement for CRSP powerplants

providing supplemental Regulation Service to the WACM Balancing Authority, and (3) the cost of purchases to support Regulation Service. The load taking Regulation Service within WACM is derived by measurement of the load coincident with the LAP transmission system peak on a rolling 12-month average, plus the nameplate capacity of the intermittent resources located within the Balancing Authority.

The provisional Regulation Service rate was developed based on the analysis of data relevant to the WACM Balancing Authority, and an extensive record was compiled during the process. Each Balancing Authority has unique operating characteristics and constraints when providing ancillary services. This rate is specifically designed for WACM's unique operating characteristics.

Basis for Rate Development

The existing rate for Regulation Service in Rate Schedule L–AS3 expires on February 28, 2009.

The provisional rate will provide sufficient revenue to pay all annual costs, including interest expense and repayment of power investment, and will ensure that revenues are collected from the appropriate entities. The provisional rate will take effect on June 1, 2006, and will remain in effect through May 31, 2011.

D. Rate Adjustment Background/Rates History

Background

Western published a Notice of Proposed Rate for Regulation Service in the **Federal Register** on June 13, 2003 (68 FR 35398). One component of that proposed rate specifically addressed Regulation Service needs for intermittent resources. However, that component was withdrawn from the Final Notice of Rate Order published in the **Federal Register** on January 12, 2004 (69 FR 1723), to allow further study and input from interested parties. This provisional rate for Regulation Service is the culmination of that continued study and input from various interested parties.

Existing, Proposed, and Provisional Rates

Western received comments during the Consultation and Comment Period that ended September 19, 2005. Based on comments received and further analysis, Western has revised its June 20, 2005, proposed rate to reflect the final provisional rate outlined in this rate order.

Description of Existing Rate

Western's existing rate for Regulation Service is a load-based rate which is applied to entities' auxiliary loads within WACM. The existing rate provides for entities to be credited when providing WACM with Regulation Service, and waives charges if the load/resource is dynamically metered out of WACM. Western's existing rate contains no provision for application of pass-through costs. Following is a description of the changes made from the proposed rate to the provisional rate:

Load-Based Assessment Changes

The June 2005 proposed rate maintained the existing rate's load-based rate for application to auxiliary loads, but limited the application of that load-based rate for intermittent resources equal to or less than 10 percent of an entity's auxiliary load. The proposed rate also provided for an assessment to any load or resource deemed to be non-conforming.

The provisional rate eliminates the 10-percent limit, and applies the load-based rate to both the auxiliary loads and the total installed intermittent resources within the Balancing Authority.

Changes in the Pass-Through Assessment

The June 2005 proposed rate included provisions for periodic evaluations of all generators' performance within the Balancing Authority, and for those identified as non-conforming, provided for a pass-through cost. In the proposed rate, pass-through costs would also be applied to entities' intermittent resources exceeding 10 percent of their auxiliary load.

The provisional rate eliminates the generator performance evaluation, as well as the 10-percent measurement and the non-conforming load/resource analysis. In the provisional rate, only intermittent resources that are exported are charged a pass-through cost for Regulating Reserves.

Changes in Self-Provision or Cost Waiver Assessment

The June 2005 proposed rate maintained the cost waiver if a load or resource was dynamically metered out of the Balancing Authority. If an entity claimed to be self-providing Regulation Service, the proposed rate gave the option of fully or partially self-providing (no different than the existing rate). The measurement of partial self-provision would be accomplished by measuring the first derivative of the average 1-minute change in the entity's ACE. An entity claiming to fully self-provide Regulation Service would have a choice of responding to WACM's dynamic ACE proportional to the entity's load, allowing WACM direct access to pulse the entity's regulating units, or some other mutually agreed-to process.

The provisional rate no longer provides the option for an entity to respond to a proportional share of WACM's ACE. The provisional rate retains the option for an entity to allow WACM to directly pulse the entity's regulating units. It has also been adjusted slightly to measure partial self-provision by offering the customer the option of measuring either the entity's first derivative of the average 1-minute change in its ACE, or its averaged 1-minute ACE.

Summary of the Provisional Rate Effective June 1, 2006

The provisional rate maintains the load-based assessment for auxiliary loads and the allowance for self-provision of the service, but allows the following choices for measuring that self-provision: (1) The first derivative of the averaged 1-minute change in the entity's ACE, or (2) the entity's average 1-minute ACE.

The provisional rate eliminates the 10-percent limitation for intermittent resources to receive the load-based rate and instead applies the load-based rate to the total installed capacity of the intermittent resource.

The provisional rate also eliminates the conforming versus non-conforming load/resource analysis. However, any intermittent resource exporting from WACM via a schedule would still be charged a pass-through cost based on the average hourly mismatch between forecast and actual generation.

Existing and Provisional Rates

A comparison of the existing, proposed, and provisional rates is as follows:

Existing Rate Schedule L–AS3 Effective March 1, 2004	Proposed Rate Schedule L–AS3 Proposed June 20, 2005	Provisional Rate Schedule L–AS3 Effective June 1, 2006
Load-Based Rate	Load-Based Rate	Load-Based Rate
Applied to:	Applied to:	Applied to:

Existing Rate Schedule L–AS3 Effective March 1, 2004	Proposed Rate Schedule L–AS3 Proposed June 20, 2005	Provisional Rate Schedule L–AS3 Effective June 1, 2006
Load-Based Rate	Load-Based Rate	Load-Based Rate
(1) Entity's auxiliary loads	(1) Entity's auxiliary loads; ..... (2) Entities' intermittent resources ≤ 10% of their auxiliary load within WACM, after 180 MW limit for intermittent resource installation reached; and (3) Non-conforming type load (charged an adjusted load-based rate).	(1) Entity's auxiliary loads; and (2) Entities' total installed inermittent resources' capacity within WACM, with no installation limit. (3) Eliminated.
Pass-Through Cost: Market-Based	Pass-Through Cost: Market-Based	Pass-Through Cost: Market-Based
N/A	Applied to: ..... (1) all generators without designated load in WACM; and. (2) entities with installed intermittent generation 10% of their auxiliary load within WACM, after 180 MW limit for intermittent resource installation reached, will be charged as follows: (a) Regulation Charge for minute-to-minute fluctuations. (b) Regulating Reserve Charge for hourly mismatch of capacity.	Applies to: (1) See No. (2), in Cost Waiver section below. (2) No limit on installed intermittent generation, which will be charged as outlined in a. and b., below: (a) Regulation Charge (load-based) will be charged to total installed intermittent resources (see Load-Based Rate, No. (2). (b) intermittent resources exporting from WACM via schedule will be charged for a Regulating Reserve Charge based on the hourly mismatch of forecast versus actual generation.
Cost Waiver:	Cost Waiver:	Cost Waiver:
Cost for service partially or fully waived if: ..... (1) generator or load dynamically metered out of WACM; or (2) an entity provides its own service (partially or fully) and claim is accepted by WACM	Cost for service partially or fully waived if: ..... (1) generator or load dynamically metered out of WACM; or. (2) entities with manual AGC that are partially self-providing (charged load-based rate), will be measured by the first derivative of the averaged 1-minute change in the entity's error signal; or (3) entities with automatic AGC, that want to fully provide service (no charge) must: (a) be willing/able to respond to WACM's dynamic signal, proportional to entity's load; (b) allow WACM direct access to pulse entity's regulating units; (c) mutually agree to any other proven methodology or process; or (d) if entity does not comply with (a), (b), or (c), it will be subject to measurement outlined in manual AGC description in No. (2), in this section.	Cost for service partially or fully waived if: (1) generator or load dynamically metered out of WACM; or (2) entities partially self-providing (charged the load-based rate) will be measured by either: (a) first derivative of the averaged 1-minute change in the entity's ACE; or (b) the entity's average 1-minute ACE; or (3) entitites wishing to fully provide service must: (a) no longer applicable; (b) allow WACM direct access to pulse entity's regulating units; (c) mutually agree to any other proven methodology or process; or (d) if entity doe not comply with b. or c., it will be subject to measurement outlined in this section, Nos. (2)(a) or (2)(b).

Customer Accommodation

As referenced in Western's existing rate schedule for Regulation Service, entities requiring service "* * * must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Regulation obligations." (69 FR 1734) Western expects that entities requiring Regulation Service will take service from the WACM Balancing Authority.

However, for entities unwilling to take Regulation Service from the WACM Balancing Authority, self-provide it, or acquire it from a third party, Western has an established record of assisting and will continue to assist entities in the dynamic metering of their loads or resources out of the Balancing Authority. Until such time as meter reconfiguration is accomplished, an entity will be responsible for Regulation Service charges assessed by the WACM Balancing Authority under the rate then in effect.

Certification of Rates

Western's Administrator certified that the provisional rate for Regulation Service is the lowest possible rate consistent with sound business principles. The provisional rate was developed following administrative policies and applicable laws.

Comments

The comments and responses regarding the Regulation Service rate, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed have been organized into three sections: (1) Rate Design, (2) Implementation, and (3) Miscellaneous.

1. Rate Design

A. *Comment:* Several comments expressed concern about the difference between Western's interpretation and their own regarding the true nature of Regulation Service. The commenters stated that Western's methodology for Regulation Service increases the cost of the service as expensive regulating units also support load-following and ramping.

Response: The Commission requires balancing authorities to offer transmission customers Regulation and Frequency Response Service. However, there is no standard definition for load-following in any Commission document, NERC's glossary of terms, or WECC's reliability criteria. Within WACM, there is no distinction between Regulation Service and load-following during the hour on a real-time basis.

WACM's Regulation Service, ramping, and load-following are performed simultaneously by the same units. As typical loads require all three services, it serves no purpose to operationally separate the functions.

Out of the 16 customers taking Regulation Service from Western, the 7 balancing authorities adjacent to Western, or the 34 balancing authorities within the Western Interconnection, none have made requests or submitted comments to Western regarding the separation of these services.

B. *Comment:* A comment suggested Western develop a mechanism to tap into the ramping capability of non-Federal thermal generation within WACM, so that the cost of Regulation Service and load-following could be reduced for all customers.

Response: This comment is out of the scope of this rate action. However, the ramping capability identified in the comment is not owned by Western. Such resources are fully committed or used for the respective owners' deliveries to load. Any use of available ramping capability would have to be purchased from the thermal generation's owner and replaced to accommodate previous operational commitments.

C. *Comment:* A comment states that the proposed rate methodology adds unneeded complexity to the rate.

Response: Western believes that the methodology adopted in the provisional rate reflects a more accurate assignment of costs and is a reasonable modification of the existing approved rate for Regulation Service. The methodology is no more complex than necessary to assign costs fairly and provide adequate customer choice.

D. *Comment:* The rate adjustment fails to assess the actual physical Regulation Service burden placed on the system by each separate customer and improperly recovers costs from each customer in proportion only to the Regulation Service burden placed on the system by each customer group.

Response: This methodology is unchanged from the previous Commission-approved rate and is consistent with regional and Western Interconnection practices. A separate rate or system burden is not identified for each customer, and proportional, cost-based assessments will continue to be made for each customer's load share of the system's Regulation Service requirements.

E. *Comment:* A commenter believes that the Regulation Service rate should be based on the Regulation Service allocation method described in the January 2000 report, "Customer-Specific Metrics for the Regulation and Load Following Ancillary Services," authored by Brendan Kirby and Eric Hirst of Oak Ridge National Laboratory.

Response: Based upon Western's research, the methodology outlined in the January 2000 report referenced by the comment has not been adopted and put into practice by any entity or Balancing Authority in the electric utility industry.

Western's load-based rate is approved by the Commission and has been in effect for approximately 8 years. Western believes that minor adjustments to the approved rate, based on operating experience and Balancing Authority needs, are a reasonable modification.

The provisional rate methodology, specifically tailored for WACM's unique mix of resources, results in the lowest cost consistent with sound business principles and therefore, is most appropriate for determining Regulation Service. A complete change in methodology is unnecessary.

F. *Comment:* Western received several comments related to the analysis of wind resources, their operating characteristics, and impacts on Balancing Authority performance. Specifically, comments addressed Western's simulation studies to determine wind impacts on the Balancing Authority, the true amount of wind capacity that could be absorbed by WACM, and the cost of service for intermittent resources.

Response: In its simulation studies on Balancing Authority performance, Western projected or scaled the output of existing WACM wind resources to study the impacts of additional wind resources.

While linear scaling of a large magnitude in the range of 10 to 20 times might render questionable results, Western has demonstrated that linear scaling of 2 to 3 times is accurate for the purpose of this analysis.

As a benchmark of reasonability, Western worked with a neighboring Balancing Authority with similar characteristics and a 204-MW wind farm. Analyses revealed that this wind farm had significant intra-hour fluctuations, often up to the installed capacity of the units. During these times, the neighboring Balancing Authority saw a significant degradation in its operating performance.

Despite the fluctuations in output from wind or other intermittent resources, Western has determined by reviewing additional information and public comments that at present, there is no need to establish a limit for the amount of wind that may be installed for use by loads residing within the Balancing Authority.

For resources exported out of the Balancing Authority, Western will charge the load-based rate against the nameplate of the resource plus a Regulating Reserve Charge, measured by the average hourly mismatch of the forecast versus the actual generation, and using pass-through pricing.

G. *Comment:* Western has effectively double-charged customers for energy associated with Regulation Service, by charging them once in their Energy Imbalance Service rate schedule and by charging them again within the Regulation Service rate as a Regulating Reserve Charge.

Response: In the interest of clarification, Western notes that its Energy Imbalance Service credits customers who over-deliver their resources and charges customers who under-deliver their resources.

Western will not double-collect by charging for both Energy Imbalance Service and Regulating Reserve charges. The proposed Regulating Reserve Charge is a separate and distinct charge and can be viewed in the same light as a "unit commitment" charge; *i.e.*, what Western needs to keep on-line when an intermittent resource's actual output differs from its scheduled output.

Western notes that the Regulating Reserve Charge would only apply to entities exporting their intermittent generation out of WACM.

H. *Comment:* A comment states that Western's metric does not work above the 10-percent penetration rate (as defined by Western). For wind capacity in excess of this limit, there is no indication of what metric will be used to calculate the impact of wind on the system regulation requirements.

Response: Western has eliminated the limit for intermittent generation of 180 MW or 10 percent of the Balancing Authority's auxiliary load, primarily due to the dynamic circumstances surrounding the impacts of additional intermittent resource installation. It is highly likely that WACM would experience degradation in its CPS2 should a single 200-MW intermittent resource be added to the Balancing Authority's resource mix. Historically, however, WACM has seen a very gradual addition of wind generators and has been able to adapt its system to operate around the volatility of these generators. Therefore, Western has eliminated the limit in the provisional rate.

2. Rate Implementation

A. *Comment:* Western has incorrectly identified non-conforming loads and did not adequately define how they would be measured.

Response: Western's proposed metric for identifying conforming versus non-conforming load was accurate, and properly distinguished between these two types of loads. However, the WACM Balancing Authority does not presently have any non-conforming load within its boundaries, and is not anticipating such load in the foreseeable future. This led to a decision to eliminate the non-conforming load assessment from the provisional rate.

B. *Comment:* An SBA with AGC must respond to an error signal from WACM "proportional to the SBA's load within the Balancing Authority," which would be inequitable, as allocation of regulating burden cannot be assessed on load. Regulating Service charges are more properly based on the volatility of the load, not on average demand.

Response: The option of responding to a proportional share of WACM's dynamic signal was one of several options available to customers. However, this option was eliminated from the provisional rate. Other remaining alternatives include paying the same load-based Regulation Service rate as others or being treated as an SBA without AGC, both of which would resolve the comment's concern that it only respond to the "volatility" of its own load (see Response to Comment 2.C. below).

Regarding the comment that a proportional response of a customer's AGC to an error signal from the Balancing Authority is inequitable, Western believes that this arrangement is equitable and necessary to prevent WACM from being the first to respond to a dynamic signal when an SBA cannot. It ensures that the SBA absorbs, on a proportional basis, responsibility for Regulation Service within the Balancing Authority.

C. *Comment:* Under the self-provision assessment methodology, the limits of 0.5 percent and 1.5 percent to determine whether there are full, partial or no charges for a period are completely arbitrary.

Response: The bandwidths of 0.5 percent and 1.5 percent are not arbitrary and follow calculations used by NERC for computing allowable excursions for each Balancing Authority. This calculation is based on the proportional share of generation response within a Balancing Authority's boundaries, contrasted to total generation response in the Interconnection.

D. *Comment:* A commenter maintains that it is providing its own Regulation Service, and, therefore, is not subject to WACM's ancillary service rate for Regulation Service.

Response: Western's position is that all entities operating within the Balancing Authority that are not NERC-recognized balancing authorities must take Regulation Service from the host Balancing Authority, unless they can demonstrate that they are actually providing their own service or are not using the resources of the host Balancing Authority.

An entity's claim of full self-provision of Regulation Service must be demonstrated through joint study between the entity and the Balancing Authority, and approved by WACM. Until such time as full self-provision is demonstrated and approved, the entity will be charged for Regulation Service based on the entity's choice of: (1) The first derivative of the averaged 1-minute change in the entity's ACE; (2) the entity's average 1-minute ACE, as outlined in Rate Schedule L-AS3, Section 3.1; or (3) the load-based rate, applied against the entity's load.

E. *Comment:* The rate methodology does not credit the SBA for providing frequency response service which could motivate the SBA to set its Frequency Bias to zero, resulting in governor response being withdrawn by the AGC system during a system disturbance.

Response: For those entities operating generation in a tie-line bias mode, Western will offset the calculated Regulation Service requirement by mutual agreement with the SBA.

Western will not provide credit for the governor response, as it is an involuntary action by the generating units across the Western Interconnection to arrest frequency from further degradation in the aftermath of a large contingency.

3. Miscellaneous

A. *Comment:* Several comments applauded Western for its efforts to develop a rate for Regulation Service that recognizes the costs associated with providing the service and attempts to allocate those costs to the transmission customers responsible for incurring those costs.

Response: Western notes the comments.

B. *Comment:* A comment recommends WACM abandon the present proposal and develop a Regulation Service rate that uses technically defensible metrics to measure consumption of the service.

Response: Western acknowledges the recommendation, but believes that its methodology is technically defensible, and it would not be reasonable to abandon efforts to manage and accurately account for the cost of providing Regulation Service. Western provided appropriate time and opportunity for consultation and comment on the proposed action in accordance with the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, set out in 10 CFR part 903.

C. *Comment:* A comment renewed an offer to help Western develop an appropriate

Regulation Service tariff and help analyze the impact of wind generation.

Response: Western appreciates the offers of assistance it received during the course of this rate process, however, Western cannot give favored status to any group or groups in the design and implementation of proposed actions.

Western did accept information and input from all concerned parties, both formally and informally, worked closely with technical staff from other agencies, and hosted panel discussions regarding the proposed rate at many wind-related conferences and meetings.

Western also believes that it is in the best position to design its Regulation Service rate, based on the unique characteristics of WACM, the regional Federal hydroelectric powerplants, and Western's mission.

Availability of Information

Information about this rate adjustment, including comments, letters, memorandums and other supporting materials Western used to develop the provisional rates, is available for public review in the Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The provisional rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective June 1, 2006, Rate Schedule L–AS3 for the Loveland Area Projects and the Western Area Colorado Missouri Balancing Authority of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of it or a substitute rate on a final basis through May 31, 2011.

Dated: May 9, 2006.

Clay Sell,

Deputy Secretary.

Rate Schedule L–AS3, Schedule 3 to Tariff, June 1, 2006

Rocky Mountain Region; Regulation And Frequency Response Service

Effective

The first day of the first full billing period beginning on or after June 1, 2006, through May 31, 2011.

Applicable

Regulation and Frequency Response Service (Regulation Service) is necessary to provide for the continuous balancing of resources, generation and interchange with load, and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation Service is accomplished by committing online generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Colorado Missouri (WACM) Balancing Authority operator. The Customers (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission systems within WACM) must purchase this service from WACM or make alternative comparable arrangements to satisfy their Regulation Service obligations. The charges for Regulation Service are outlined below.

LAP charges for Regulation Service may be modified upon written notice to Customers. Any change to the Regulation Service charges will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. Western will charge Customers under the rate then in effect.

Types

There will be three different applications of this rate, none of which are exclusive of the other, and all three may be applied to the same entity where appropriate. The three applications are:

1. *Load-based Assessment:* The Rate is reflected in the Formula Rate section and will be applied to entities who serve load within the WACM Balancing Authority. This load-based rate will be assessed on an entity's auxiliary load (total metered load less Federal entitlements) and will also be applied to the installed nameplate capacity of all intermittent generators within WACM.

2. *Exporting Intermittent Resource Assessment:* This application will apply to entities that export the output from intermittent resource(s). The entity will continue to pay the load-based charge on the nameplate capacity, as described in No. 1 above, but will also pay an additional Regulating Reserve charge for mismatched capacity; i.e., the hourly average mismatch of the resource's forecast versus actual generation, using the regional market rate for capacity/reserves as pricing.

3 *Self-Provision Assessment:* Western will allow entities with automatic or manual generation control to self-provide for all or a portion of their loads. Typically, entities with generation control are known as Sub-Balancing Authorities (SBA) and should meet all of the following criteria:

a. Have a well-defined boundary, with WACM-approved revenue-quality metering, accurate as defined by NERC, to include MW flow data availability at 6-second or smaller intervals.

b. Have AGC capability.

c. Demonstrate Regulation Service capability.

d. Execute a contract with the WACM Balancing Authority to:

i. Provide all requested data to the WACM Balancing Authority.

ii. Meet SBA Error Criteria as described under section 3.1 below.

3.1. Self-provision will be measured by use of the entity's 1-minute average ACE or the entity's 1-minute first derivative of ACE (at the customer's choice), to determine the amount of self-provision. The assessment will be calculated every hour and the value of ACE or its derivative will be used to calculate the Regulation Service charges as follows:

a. If the entity's 1-minute average ACE or entity's 1-minute first derivative of ACE is ≤ than 0.5 percent of the entity's hourly average load, no Regulation Service charges will be assessed by WACM.

b. If the entity's 1-minute average ACE or the entity's 1-minute first derivative of ACE is ≥ 1.5 percent of the entity's hourly average load, WACM will assess Regulation Service charges to the entity's entire load, using the load-based rate.

c. If the entity's 1-minute average ACE or the entity's 1-minute first derivative of ACE is > 0.5 percent of the entity's hourly average load, but < 1.5 percent of the entity's hourly average load, WACM will assess Regulation Service

charges based on linear interpolation of zero charge and full charge.

Customer Accommodation

For entities unwilling to take Regulation Service, self-provide it as described above, or acquire the service from a third party, Western will assist the entity in dynamically metering its loads/resources to another Balancing Authority. Until such time as that meter configuration is accomplished, the entity will be responsible for charges assessed by WACM under the rate in effect.

Formula Rate

Load-Based Rate, applicable to No. 1 and No. 3 as described above and outlined in the "Types" section of this rate schedule:

$$\text{WACM Regulation Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation}}{\text{Load in the Balancing Authority Requiring Regulation Plus the Nameplate of Intermittent Resources}}$$

Pass-Through Costs (Market), will be applicable only to No. 2 as described above and outlined in the "Types" section of this rate schedule.

Rates

Load-Based Rate

The rate to be in effect June 1, 2006, through September 30, 2006, for Nos. 1, 2, and 3, as described above and outlined in the "Types" section of this rate schedule is:

Monthly: $0.219/kW-month
Weekly: $0.051/kW-week
Daily: $0.007/kW-day
Hourly: $0.000292/kWh

This rate is based on the above formula and on fiscal year 2004 financial and load data, and will be adjusted annually as new data become available.

Pass-Through Rate

The rate to be in effect June 1, 2006, through September 30, 2006, for No. 2 as described above and outlined in the "Types" section of this rate schedule will be the regional market-based cost for capacity/reserves.

[FR Doc. E6–7494 Filed 5–16–06; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2002–0001; FRL–8068–7]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S. App.2 (Public Law 92-463), EPA gives notice of a 2-day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the meeting is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on June 14, 2006 from 9 a.m. to 5:30 p.m., and June 15, 2006 from 10:45 a.m. to 1 p.m.

Registration to attend the meeting identified by docket identification (ID) number EPA–HQ–OPPT–2002–0001, must be received on or before June 9, 2006. Registration will also be accepted at the meeting.

Request to provide oral and/or written comments at the meeting, identified as (NPPTAC) June 2006 meeting, must be received in writing on or before May 30, 2006.

Request to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2002–0001, must be received on or before May 30, 2006.

For information on access or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or *npptac.oppt@epa.gov*. To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Meetings of the Committee Work Groups will take place as follows. The Globally Harmonized System (GHS) of Classification and Labeling of Chemicals Interim Work Group will meet on June 13, 2006 from 8 a.m. to 12 p.m., to discuss activities related to EPA's Program. The Government Accountability Office (GAO) Reports Interim Work Group will also meet on June 13, 2006 from 8 a.m. to 12 p.m. The Pollution Prevention (P2) Work Group will meet on June 13, 2006 from 1:30 p.m. to 5:30 p.m., to discuss activities related to EPA's Pollution Prevention Programs. The Information Integration and Data Use Work Group will also meet on June 13, 2006 from 1:30 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza National Airport Hotel, located at 1480 Crystal Drive, Arlington, VA.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: John Alter, (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: npptac.oppt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individual groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. 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 an official public docket for this action under docket ID number EPA–HQ–OPPT–2002–0001. 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 access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number EPA–HQ–OPPT–2002–0001, include NPPTAC June 2006 meeting in the subject line on the first page of your comment.

1. *By mail.* OPPT Document Control Office, Environmental Protection Agency, (7407M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001.

2. *Electronically.* At *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

3. *Hand delivery/courier.* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW, Washington DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: Pollution Prevention, Risk Assessment; Risk Management; Risk Communication; Information Integration and Data Use; The Government Accountability Office (GAO) Reports; The Globally Harmonized System of Classification and Labeling of Chemicals (GHS); Tribal Lifeways; and NPPTAC Future Planning. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2002–0001, must be received on or before June 9, 2006.

For information on access, or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or email *npptac.oppt@epa.gov.* To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

List of Subjects

Environmental protection, NPPTAC, pollution prevention, toxics, toxic chemicals, and chemical health and safety.

Dated: May 3, 2006.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics

[FR Doc. E6–7412 Filed 5–16–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0163; FRL–8064–8]

Aldicarb Risk Assessment; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Health Effects risk assessment, and related documents for the carbamate pesticide aldicarb, and opens a public comment period on these documents. EPA's Environmental Risk assessment has previously been released for public comment. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for aldicarb through a modified, public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0163[*insert number*], 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–2005–0163[*insert number*]. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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: Sherrie Kinard, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0563; fax number: (703) 308–8005; e-mail address: *sherrie.kinard@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

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for aldicarb, a carbamate pesticide, and soliciting public comment on risk management ideas or proposals. Aldicarb is registered for use as a systemic insecticide, acaricide and nematicide on agricultural crops including citrus, cotton, dry beans, peanuts, pecans, potatoes, sorghum, soybeans, sugar beets, sugarcane, sweet potatoes, and seed alfalfa (CA). In addition, aldicarb may be applied to field grown ornamentals (CA) and tobacco, and on coffee grown in Puerto Rico. The types of plant pests controlled by aldicarb include leaf phylloxera, bud moth, citrus nematode, aphids, mites (citrus red, citrus rust, Texas citrus), white flies, thrips, fleahoppers, leafminers, leafhoppers, overwintering boll weevil (adults feeding on foliage), lygus, nematodes, cotton leaf perforator, seedcorn maggot, Mexican bean beetle, flea beetles, Colorado potato beetle, greenbug, chinch bug, three cornered alfalfa hopper (suppression), and sugar beet root maggot.

The largest uses of aldicarb are peanuts, sweet potatoes, cotton, potatoes, and citrus. Aldicarb is a restricted use pesticide (RUP), and may be applied only in occupational settings by certified applicators. There are no products containing the active ingredient aldicarb which are intended for sale to homeowners or for occupational use in non-occupational settings (e.g., turf or golf course). EPA developed the risk assessment and risk characterization for aldicarb through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Aldicarb is formulated and marketed solely as a granular pesticide. Aldicarb in a vinyl binder coating is adhered to either a corn cob grit or gypsum substrate; these two substrates produce less dust than typical clay substrates used for granular pesticides. Only the gypsum granular is available in closed loading systems. The formulations consist of 5, 10 and 15% granular, which are applied early in the growing season, either pre-plant, at-planting, or early post-emergent, using ground application equipment. Labels specify use of positive displacement application equipment and immediate soil incorporation.

For most crops, only one aldicarb application per season is allowed, but 2 or 3 split applications are permitted on sugar beets. The pre-harvest intervals (PHIs) are generally long due to the early application timing, ranging from 80 to 150 days when specified.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for aldicarb. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as, additional toxicological data, worker exposure data, and usage information, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals for aldicarb. Risks of concern associated with the use of aldicarb are: acute dietary risk estimates for the general U.S. population and all population subgroups at the 99.9th percentile of exposure; acute aggregate food and water risk estimates for adults and children; and worker risk estimates for most mixers, loaders and

applicators. In addition, EPA is providing interested parties an opportunity to submit risk management proposals for ecological risks of concern including those to birds, mammals, fresh water and marine fish and invertebrates. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to aldicarb, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For aldicarb, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed, the decisions presented in the RED may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the carbamate pesticides.

All comments should be submitted using the methods in **ADDRESSES,** and must be received by EPA on or before the closing date. Comments will become part of the Agency docket for aldicarb. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

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. E6–7496 Filed 5–16–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–67–B (Auction No. 67); Docket No. 06–38; DA 06–871]

Closed Action of 400 MHz Air-Ground Radiotelephone Service Licenses (Auction No. 67) is Cancelled

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the cancellation of the 400 MHz Air-Ground Radiotelephone Service License Auction No. 67.

FOR FURTHER INFORMATION CONTACT: Howard Davenport at (202) 418–0660 or Linda Sanderson at (717) 338–2868.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 67 Cancellation Public Notice* released on April 20, 2006. The complete text of the *Auction No. 67 Cancellation Public Notice* and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 67 Cancellation Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, DA 06–871. The *Auction No. 67 Cancellation Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/67/.*

1. The Wireless Telecommunications Bureau (Bureau) announces the cancellation of the auction of nine site-based licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service which had been scheduled to begin on August 23, 2006.

2. On March 3, 2006, the Bureau released *Auction No. 67 Comment Public Notice*, 71 FR 12698, March 13, 2006, announcing the schedule for Auction No. 67 and seeking comment on reserve process or minimum opening bids amount and the procedures to be used in the auction. Participation in Auction No. 67 was to be limited to certain identified parties that had previously filed mutually exclusive applications for the nine 400 MHz Air-Ground licenses. That public notice advised each applicant of the requirement to provide supplemental information by 6 p.m. ET on April 5, 2006, and warned that failure to do so by the deadline would result in dismissal of its application and ineligibility to participate in the auction.

3. The Bureau received no supplemental information regarding any of the nine applicants for Auction No. 67. Accordingly, each of the previously filed FCC Form 601 applications will be dismissed, thus eliminating the need to conduct Auction No. 67.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–7432 Filed 5–16–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WTB Docket No. 02–353; FCC 06–50]

Federal Communications Commission and the National Telecommunications and Information Administration—Coordination Procedures in the 1710–1755 MHz Band

AGENCY: Federal Communications Commission and National Telecommunications and Information Administration.

ACTION: Notice.

SUMMARY: By this joint public notice, the Federal Communications Commission (Commission) and the National Telecommunications and Information Administration (NTIA) provide information to assist coordination in the 1710–1755 MHz band, to facilitate the transition of this band from Federal government use to non-Federal use. Specifically, we provide guidance to assist the Commission's Advanced Wireless Service (AWS) licensees in this band to begin implementing service during the transition of Federal operations from the band while providing interference protection to incumbent Federal government operations until they have been relocated to other frequency bands or technologies.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 and National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peter Corea or Blaise Scinto, Wireless Telecommunications Bureau at 202–418–0600; Ronald Repasi of the Office of Engineering and Technology, (202) 418–2472 or Edward Drocella, Office of Spectrum Management, National Telecommunications and Information Administration, (202) 482–2608.

SUPPLEMENTARY INFORMATION:

1. In 2002, NTIA released a Viability Assessment report which concluded that the 1710–1755 MHz band could be reallocated from Federal government use to non-Federal use to accommodate AWS.[1] As a result, the Commission conducted a proceeding in which it allocated spectrum for AWS in the 1710–1755 MHz, 2110–2150 MHz and 2150–2155 MHz bands.[2] The Commission subsequently adopted service rules for AWS in these bands, including application, licensing, operating and technical rules.[3] The 1710–1755 MHz band is currently used for Federal government operations for fixed and transportable microwave and aviation-related safety communications, and by the Department of Defense (DOD) for fixed microwave, tactical radio relay, and aeronautical mobile stations.

2. On December 23, 2004, the President signed into law Pub. L. No. 108–494, the Commercial Spectrum Enhancement Act (CSEA).[4] The CSEA provides a funding mechanism to relocate incumbent Federal government operations in certain bands, including the 1710–1755 MHz band.[5] The CSEA requires NTIA to provide to the Commission relocation cost and timeline estimates "by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems * * * [t]o the extent practicable and consistent with national security considerations * * *."[6] On December 27, 2005, NTIA provided the Commission with the following information[7] for each Federal station in the 1710–1755 MHz band:

- Serial Number;
- Longitude/Latitude of Transmitter and Receiver sites;
- Frequency Center Channel;
- Bureau Code (Agency Identifier);
- Service Type (*e.g.*, fixed microwave, aeronautical);
- Relocation Timeline;
- Cost Estimate;
- Agency Point of Contact.

3. The CSEA permits the Commission to grant commercial licenses in these bands prior to relocation of Federal government operations and the termination of a Federal entity's authorization.[8] However, the CSEA requires the Commission to condition such licenses by requiring that commercial licensees "cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by [NTIA]."[9] Harmful radiofrequency interference could cause systems or networks to experience catastrophic outages affecting critical missions, such as the operation of electric grids. Moreover, catastrophic outages can result in loss of life, property, and power at the local, state, interstate and international levels. In order to effectuate the CSEA's prohibition against harmful interference against Federal incumbent operations, the Commission will condition AWS licenses on licensees coordinating frequency usage with known co-channel and adjacent channel incumbent Federal users operating in the 1710–1755 MHz band. The condition will apply prior to licensees initiating operations from base or fixed stations where such operations may impact incumbent Federal users.

4. Operational sharing of spectrum by Federal government and non-Federal stations is subject to the interference regulations prescribed by the Commission.[10] The *AWS Service Rules R&O* prescribed in-band protection for Federal government DOD stations at 16 protected sites based on use of coordination zones around those sites.[11] The Commission prescribed in-band protection for other Federal government stations pending their relocation, based on the same technical standard (TIA Telecommunications Systems Bulletin 10–F) that has been used for clearance of microwave service from the Broadband Personal Communications Service (PCS) and other bands.[12]

5. Operational sharing of spectrum by Federal government and non-Federal stations is also subject to coordination procedures that the Commission and NTIA jointly establish and implement to ensure against harmful interference.[13] In

[1] *See* NTIA Report, "An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710–1770 MHz and 2110–2170 MHz Bands" (July 22, 2002) (available at *http://www.ntia.doc.gov/ntiahame/threeg/va7222002/3Gva072202web.htm*).

[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, *Secand Repoit and Order*, 17 FCC Rcd 23193 (2002).

[3] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, WT Docket No. 02–353, 18 FCC Rcd 25162 (2003); *madified by* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, *Order on Recansideratian*, 20 FCC Rcd 14058 (2005) (codified at 47 CFR Part 27, subpart L) (*AWS Service Rules R&O*).

[4] Pub. L. No. 108–494, 118 Stat. 3896, 3992 (2004).

[5] Title II of Pub. L. No. 108–494, 118 Stat. 3986, 3991 (2004) (codified at 47 U.S.C. 928).

[6] 118 Stat. at 3992–93 (codified at 47 U.S.C. 923(g)(4)(A), (C)).

[7] The most current version of this information can be found at the NTIA Web site at *http://www.ntia.dac.gav/osmhome/reports/specrelo/index.htm*.

[8] 118 Stat. 3994 (codified at 47 U.S.C. 309(j)(15)(c)).

[9] *Id.*; *see alsa* 47 CFR 27.1134 (Protection of Federal Government Operations).

[10] 47 U.S.C. 923(b)(2)(C).

[11] 47 CFR 27.1134(a).

[12] 47 CFR 27.1134(b). Protection of non-DoD operations in the 1710–1755 MHz and 1755–1761 MHz bands. Until such time as non-DoD systems operating in the 1710–1755 MHz and 1755–1761 MHz bands are relocated to other spectrum, AWS licensees shall protect such systems by satisfying the appropriate provisions of TIA Telecommunications Systems Bulletin 10–F, "Interference Criteria for Microwave Systems," May, 1994 (TIA 10–F).

[13] 47 U.S.C. 923(b)(2)(C).

this regard, the Commission, in consultation with NTIA, will require all AWS licensees to coordinate AWS use of the 1710–1755 MHz band during the transition so that licensees can deploy their systems in a timely and efficient manner without causing harmful interference to existing Federal operations during the transition. Coordination will assist new licensees in determining when new systems can be deployed without causing harmful interference to Federal incumbents. At the same time, coordination will provide Federal incumbents with some assurance that critical operations will not be interrupted due to harmful interference.

6. The Commission's part 24 and part 101 rules contain coordination rules applicable to shared use of the PCS band which may provide guidance regarding similar procedures that could be used in the AWS band. These rules require licensees to coordinate their frequency usage with the co-channel or adjacent channel incumbent fixed microwave licensees before initiating operations.[14] In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts.

7. To help AWS licensees satisfy the coordination condition that we intend to place on their licenses, the Commission provides the following pre-operational procedures. Adherence to these procedures would constitute a reasonable effort on the part of AWS licensees to comply with the license condition that they coordinate frequency usage with incumbent Federal users.

- The AWS licensee, or a third-party coordinator on its behalf, contacts the appropriate Federal agency to get information necessary to perform an interference analysis.[15] The AWS licensee enters into Non-Disclosure Agreements, as appropriate, with the subject Federal agency.
- If a Federal agency does not provide the necessary information within 30 days of a request, AWS licensees may contact NTIA for assistance.
- Using TIA Bulletin 10F, or an alternative method agreed to by the parties in cases in which TIA 10F does not apply, AWS licensees make the interference analysis necessary for determining whether new AWS operations would potentially interfere with nearby incumbent operations.
- The AWS licensee or a third-party coordinator sends the interference analysis to the appropriate designated agency contact for review.
- The Federal agency will have 60 days from acknowledgement of receipt of the interference analysis, to review the interference analysis. At the end of 60 days, if the Federal agency does not raise an objection, the AWS licensee may commence operations.
- If an agency notifies a licensee that it is experiencing interference, the AWS licensee turns off the offending station immediately and makes any necessary changes to eliminate interference.

8. In addition, to facilitate coordination, NTIA will require Federal agencies to adhere to the following procedures:

- Agencies cooperate with licensees when contacted by providing, within 30 days of a request, site specific technical information necessary to complete the interference analysis.
- If an agency disapproves of an interference analysis submitted by an AWS licensee, the agency will provide the licensee with a detailed rationale for its disapproval.
- Should harmful interference occur, agencies will work in good faith to identify the source of the harmful interference and work with AWS licensees to eliminate or mitigate the interference.

9. To further facilitate the coordination process, NTIA has published a list of agency contacts on its Web site at *http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710–1755MHz_points_of_contact.pdf* to enable licensees and Federal agencies operating in their license area to coordinate more closely. NTIA has also published information on the Federal government operations in the 1710–1755 MHz band at *http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm* and will periodically update this information as well as provide the relocation status of the stations used for Federal government operations throughout the transition.

10. The Commission and NTIA anticipate that following the above-outlined procedures will enable most AWS stations to be successfully coordinated and to start operations without causing interference to Federal operations during the transitional period. However, during the coordination process, AWS licensees unable to reach agreement on the mitigation of interference may seek redress from the Commission. For Federal agencies, in the event that the potential for harmful interference cannot be resolved satisfactorily, the matter may be referred to the NTIA, for assistance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

National Telecommunications and Information Administration.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E6–7433 Filed 5–16–06; 8:45 am]

BILLING CODE 6712–01–P

[14] *See, e.g.*, 47 CFR 24.237 and 101.103.

[15] This includes federal agencies that are authorized to operate transportable microwave equipment throughout the country on frequencies with which the AWS licensee might potentially interfere, as well as federal agencies with classified operations. Classified information will be handled in accordance with Executive Order 13292.

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.: 011957.

Title: FOML/Zim Space Charter Agreement.

Parties: Fesco Ocean Management Limited (FOML) and Zim Integrated Shipping Services, Ltd. (Zim).

Filing Party: Neil M. Mayer, Esq.; Hoppel, Mayer and Coleman; 1050 Connecticut Avenue, NW.; 10th Floor; Washington, DC 20036.

Synopsis: The Agreement provides that Zim will charter slots to FOML in the trade to/from ports in the United States to Busan, South Korea on an "as-needed, as-available" basis.

Agreement No.: 011958.

Title: BBC Chartering and Logistic-Beluga Cooperative Working Agreement.

Parties: BBC Chartering and Logistic GmbH & Co. KG, and Beluga Chartering GmbH.

Filing Party: Matthew J. Thomas, Esq.; Troutman Sanders LLP; 401 9th Street,

NW.; Suite 1000; Washington, DC 20004.

Synopsis: The agreement provides that the parties may coordinate their general commercial agency operations in the United States, including appointment of common agents to act with respect to such matters as general agency services, sales, marketing, booking and documentation, billing and collection, vessel chartering, coordination of sailings, routings and port calls, pricing, and terminal and port matters with respect to voyages to and from the U.S. and non-U.S. ports. The agreement does not establish any form of joint venture.

Dated: May 12, 2006.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–7501 Filed 5–16–06; 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 and Ocean Freight Forwarder-Transportation Intermediary Applicant:

Werner Enterprises, Inc., 14507 Frontier Road, Omaha, NE 68138. Officers: John H. Ohle, Director of Opera., (Qualifying Individual), Greg Werner, President.

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicants:

Elocate Logistic Consultants, Inc., dba LTV Relocation Services, 9262 North West 101 Street, Miami, FL 33178. Officer: Manuel Jesus Rojas, President, (Qualifying Individual).

Scan-Shipping Inc., 20 Pulaski Street, Bayonne, NJ 07002. Officers: Henrik Kjaereng, General Manager, (Qualifying Individual), Steen Dyrholm, Vice President.

Dated: May 12, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–7502 Filed 5–16–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through May 31, 2009 the current PRA clearance for information collection requirements contained in its Telemarketing Sales Rule, 16 CFR 435 ("TSR" or "Rule"). On February 2, 2006, the OMB granted the FTC's request for a short-term extension of this clearance to May 31, 2006.

DATES: Comments must be received on or before June 16, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Telemarketing Sales Rule: FTC File No. P994414" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H–135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *paperworkcomment@ftc.gov*. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1]

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Ivens, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2330.

SUPPLEMENTARY INFORMATION: On January 20, 2006, the FTC sought comment on the information collection requirements associated with the TSR, 16 CFR 435 (OMB Control Number: 3084–0097). See 71 FR 3302. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before June 16, 2006.

The TSR implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Telemarketing Act"), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), Public Law 107056 (Oct. 25, 2001). The Telemarketing Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

USA PATRIOT Act, includes calls made to solicit charitable contributions. It mandates certain disclosures by telemarketers, and directs the Commission to consider including recordkeeping requirements in promulgating a telemarketing rule to address such practices. The TSR, implementing the Telemarketing Act, mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

On January 29, 2003, the Commission issued final amendments to the TSR, which, *inter alia*, established the National Do Not Call Registry ("National Registry"), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.[2] Accordingly, under the TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the National Registry.[3] Telemarketers must periodically access the National Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[4] Other than the minimal burden associated with supplying basic identifying information to the operator of the National Registry, which is discussed below, the amendments to the Rule associated with the National Registry do not impact PRA burden.

The Supporting Statement for Information Collection Provisions of the TSR ("2003 Supporting Statement"), submitted to OMB following the 2003 amendment of the TSR, includes substantial analysis in support of the burden estimates included in that document.[5] The figures used in this Notice are based on those from the 2003 Supporting Statement, updated when necessary and when newer figures are available.

Burden Statement

Estimated annual hours burden: 2,500,000 hours.

The estimated recordkeeping burden is 28,000 hours for all industry members affected by the Rule. The estimated burden related to the disclosures that the Rule requires is 2,472,000 hours (rounded to nearest thousand) for all affected industry members. Thus, the total PRA burden is 2,500,000 hours.

Recordkeeping: Following the publication of the amended TSR in 2003, the Commission staff estimated that there were 7,400 telemarketing firms that were potentially subject to the Rule. This estimate was based on the limited input the Commission received in response to the Original User Fee NPRM, 67 FR 37,362 (May 29, 2002), regarding the number of firms that would likely access the National Registry as well as further staff analysis of the information received. Since that time, the Commission has begun operation of the National Registry, and, in the year March 1, 2005, through February 28, 2006, slightly less than 66,200 entities accessed the National Registry.[6] Of these, approximately 1,300 were "exempt" entities obtaining access to data for more than one state.[7] By definition, none of the exempt entities are subject to the TSR. Additionally, 49,574 were non-exempt entities obtaining data for only a single state. Staff assumes that these entities are operating solely intrastate, and thus are exempt from the TSR.[8] Thus, staff estimates that 15,000 entities, rounded to the nearest thousand, (66,200 − 1,300 − 49,574 = 15,326) are currently subject to the TSR.

The staff continues to estimate that these 15,000 telemarketing entities subject to the Rule each require approximately 1 hour per year to file and store records required by the TSR for an annual total of 15,000 burden hours (rounded to the nearest thousand (15,000 × 1 = 15,000)).[9] The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the Rule for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities is 23,000 hours (rounded to the nearest thousand).

In the 2003 Supporting Statement, the Commission staff estimated that 2,500 telefunder firms—professional telefunders soliciting on behalf of charities—would also be subject to the Rule, which was amended to include calls to solicit charitable contributions pursuant to the USA PATRIOT Act.[10] Staff estimated that the recordkeeping burden per entity per year would be no more than one hour for a cumulative total of approximately 2,500 hours. Staff also estimated that 25 new telefunding entrants per year would require 100 hours each to set up recordkeeping systems that would comply with the TSR. Thus, the cumulative recordkeeping burden for telefunder firms was 5,000 hours. No new data suggests that these estimates are inaccurate; therefore, the Commission staff retains these estimates.

The cumulative annual recordkeeping burden for all entities subject to the TSR—both telefunder and telemarketing firms alike—is 28,000 hours.

Disclosures: Staff believes that a substantial majority of telemarketers make in the ordinary course of business the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought OMB clearance for this Rule, staff estimates that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule. Accordingly, staff determined that the hours burden estimate for most of the Rule's

[2] 68 FR 4580 (Jan. 29, 2003).

[3] 16 CFR 310.4(b)(1)(iii)(B).

[4] 16 CFR 310.4(b)(3)(iv). The TSR requires telemarketers to access the National Registry at least once every 31 days, effective January 1, 2005. *See* 69 FR 16368 (Mar. 29, 2004). The Commission has recently proposed to revise the fees charged to entities who must pay for access to the National Registry. *See* 71 FR 25512 (May 1, 2006).

[5] The 2003 Supporting Statement is available at *http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/tsrss2003.pdf*.

[6] The March 2005 through February 2006 time frame differs from that used in the January 20, 2006 Notice (which used data from calendar year 2004) and the burden estimates herein have been adjusted accordingly.

[7] An exempt entity is one that, although not subject to the TSR and the Federal Communication Commission's Telephone Consumer Protection Act regulations, chooses to voluntarily scrub its calling lists against the data in the National Registry.

[8] These entities would nonetheless likely be subject to the Federal Communication Commission's Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the National Registry.

[9] The January 20, 2006 Notice erroneously indicated a burden of 2.3 hours per entity.

[10] Telefunders are not subject to the National Registry provisions of the TSR.

disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

Staff estimates the total disclosure burden attributable to the Rule to be 2,472,000 hours (rounded to the nearest thousand). Based on industry data, staff estimates that the 15,000 telemarketing entities subject to the Rule make 6.2 billion calls per year, or 413,000 calls per year per company (rounded to the nearest thousand).[11] The TSR provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures (providing for an inbound telephone call as a possible response), that member is exempted from complying with the Rule's oral disclosures. Based on previous estimates, staff estimates that of the 15,000 telemarketing entities, 12,656 (27:32) firms conduct inbound telemarketing, and that of these, approximately 4,200 (one-third) will choose to adopt marketing methods that exempt them from complying with the Rule's verbal disclosure requirements.[12]

The staff retains its estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds for telemarketers to disclose the required outbound call information orally plus 3 additional seconds to disclose the information required in the case of an upsell.[13] Staff also retains its estimate that at least 60 percent of sale calls result in "hang-ups" before the telemarketer can make all the required disclosures and that "hang-up" calls consume only 2 seconds. Accordingly, staff estimates that the total time associated with these disclosure requirements is approximately 1.14 million hours per year [((1.2 billion non-hangup calls [2.9 billion outbound calls × 40%] × 7 seconds) + (1.7 billion hangup calls [2.9 billion × 60%] × 2 seconds) + (570 million calls × 40% [estimated upsell conversion] × 3 seconds) + (3.3 billion inbound calls × 40% [estimated upsell conversion] × 3 seconds)) × 25% burden] or 76 hours per firm [1.14 million hours /15,000 firms].

The TSR also requires further disclosures in telemarketing sales calls before the customer pays for goods or services. These disclosures include the total costs of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). Additional specific disclosures are required if the call involves a prize promotion, the sale of credit card loss protection products or an offer with a negative option feature.

Staff estimates that the general sales disclosures require 499,167 hours annually. This figure includes the burden for written disclosures [(4,200 firms [estimated using direct mail] × 10 hours per year × 25% burden) = 10,500 hours, as well as the figure for oral disclosures [(570 million calls × 8 seconds × 25% burden) + (570 million outbound calls × 40% (upsell conversion) × 20% sales conversion × 25% burden × 8 seconds) + (3.3 billion inbound calls × 40% upsell conversion × 20% sales conversion × 25% burden × 8 seconds)].

Staff also estimates that the specific sales disclosures require 53,348 hours annually [(570 million calls × 5% [estimated involving prize promotion] × 3 seconds × 25% burden) + (570 million calls × .1% [estimated involving credit card loss protection ("CCLP")] × 4 seconds) + (570 million calls × 40% upsell conversions × 20% sales conversions × .1% [estimated involving CCLP] × 4 seconds) + (3.3 billion inbound calls × 40% upsell conversion × 20% sales conversion × .1% [estimated involving CCLP] × 4 seconds) + (570 million calls × 10% [estimated involving negative options] × 4 seconds × 25% burden) + (570 million calls × 40% upsell conversion × 20% sales conversions × 10% [estimated involving negative options] × 4 seconds × 25% burden) + (3.3 billion inbound calls × 40% upsell conversions × 20% sales conversions × 10% [estimated involving negative options] × 4 seconds × 25% burden)] + (3.3 billion inbound calls × .3% [estimated business opportunity] × 8 seconds). The total annual burden for all of the sales disclosures is 553,000 hours (rounded to the nearest thousand) or 37 hours annually per firm.

As noted above, staff retains its prior estimate that 2,500 telefunder firms are subject to the Rule. The only disclosures that the TSR requires in solicitations for charitable contributions are the disclosures in § 310.4(e)—that the call is to solicit a charitable contribution and the identity of the charitable organization on whose behalf the call is being made. The total burden for disclosures made in solicitations for charitable contributions is 778,000 hours (rounded to the nearest thousand) [(1.6 billion calls with no early hang up × 4 seconds × 25% burden) + (2.4 billion calls with early hang-up × 2 seconds × 25% burden].

Finally, any entity that accesses the National Registry, regardless of whether it is paying for access, must submit minimal identifying information to the operator of the National Registry. This basic information includes, the name address and telephone number of the entity, a contact person for the organization, and information about the matter of payment. The entity also needs to submit a list of the area codes of data for which it requests information. In addition, the entity has to certify that it is accessing the National Registry solely to comply with the provisions of the TSR. If the entity is accessing the National Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes of data for which it requests information on their behalf, and a certification that the clients are accessing the National Registry solely to comply with the TSR.

Commission staff continues to estimate, as it did in the Original User Fee NPRM, that it should take no longer than two minutes for each entity to submit this basic information, and that each entity would have to submit the

[11] Staff's estimates are likely to be conservative in light of consumer research that has been conducted after implementation of the National Registry. For example, one survey conducted by Harris Interactive® in January 2004 determined that 92% of consumers who signed up for the National Registry received fewer telemarketing calls and 25% reported that they had received no telemarketing calls. Similarly, another survey conducted by Customer Care Alliance found that 60% of consumers who placed their home telephone number on the National Registry experienced an 80% reduction in the volume of telemarketing calls. Nonetheless, as noted above, the figures used in this Notice are based on those from the 2003 Supporting Statement, updated when necessary and when newer figures are available. Accordingly, due to the lack of precise, verifiable information concerning the current volume of telemarketing calls, staff continues to rely upon the data released by the Direct Marketing Association ("DMA") in 2001. *See* The DMA, *Statistical Fact Book 2001* (23rd ed. 2001).

[12] While staff does not have information directly stating the number of inbound telemarketers, it notes that, according to the DMA 27% of all direct marketing in Year 2000 was by inbound telemarketing and 32% was by outbound telemarketing. *See Statistical Fact Book 2001* at p. 25. No new data suggests that these estimates have changed. Accordingly, using a 27:32 ratio, staff estimates that the number of inbound telemarketers is approximately 12,656 (15,000 × 27/32).

[13] An "upsell" is the soliciting of the purchase of goods or services after an initial transaction occurs during a single telephone call. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer ("external upsell"). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer ("internal upsell").

information annually.[14] Based on the number of entities accessing the National Registry that are subject to the TSR, this requirement will result in 500 burden hours (15,000 entities × 2 minutes per entity). In addition, Commission staff continues to estimate that possibly one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. This would result in an additional 250 burden hours (7,500 entities × 2 minutes per entity). Thus, Commission staff estimates that accessing the National Registry will impose a total burden of approximately 750 hours per year.

Thus, the cumulative annual disclosure burden for all entities subject to the TSR—both telefunder and telemarketing firms alike—is 2,472,000 hours (rounded to the nearest thousand).

Estimated annual labor cost burden: $37,448,000 (rounded to the nearest thousand).[15]

Recordkeeping: The estimated labor cost for recordkeeping for all entities, both telefunders and telemarketing firms, is $375,000. Assuming a cumulative burden of 7,500 hours/year to set up compliant recordkeeping systems for new telemarketing entities, and applying to that a skilled labor rate of $20/hour, labor costs would approximate $150,000 yearly for all new telemarketing entities. As indicated above, staff estimates that existing telemarketing entities require 15,000 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical wage rate of $10/hour, recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $150,000.

Based on the estimated cumulative burden of 2,500 hours/year to set up compliant recordkeeping systems for new telefunder entities, and applying to that a skilled labor rate of $20/hour, cumulative labor costs would be approximately $50,000. In addition, the annual estimated labor cost for maintaining records relating to solicitations for existing telefunder entities would be $25,000 (2,500 burden hours × $10/hour).

Disclosures: The estimated annual labor cost for disclosures for all entities, both telefunders and telemarketing firms is $37,073,000 (rounded to the nearest thousand). This estimate was derived in part by applying a wage rate of $15 per hour to: (1) 1,140,000 hours attributed to disclosing outbound call information and disclosing the information required in the case of an upsell; (2) 553,000 hours attributed to all sales disclosures; and (3) 778,000 hours for the disclosure made in solicitations for charitable contributions.

The remaining portion of the labor cost estimate is associated with supplying basic identifying information to the National Registry operator. Applying a clerical wage of $10 per hour, the cumulative annual labor cost for entities that provide the requisite information and are subject to the TSR is approximately $7,500 (750 hours × $10).[16]

Estimated annual non-labor cost burden: $12,575,000 (rounded to the nearest thousand).[17]

Total capital and start-up costs: Staff estimates that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life. The Rule's disclosure requirements require no capital expenditures.

Other non-labor costs: Affected entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the approximately 15,000 telemarketers subject to the Rule spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $750,000. Oral disclosure estimates, discussed above, applied to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour), totals $8,899,000 (rounded to the nearest thousand) (2,472,000 hours × $3.60 per hour) in phone-related costs. Accordingly, the non-labor costs for telemarketing entities associated with the Rule's information collection provisions is $9,649,000 ($8,899,000 in phone related costs + $750,000 for office supplies). Non-labor costs incurred by telefunders for telefunder organizations are estimated to be $2,926,000 (rounded to the nearest thousand) (778,000 estimated hours @ $3.60 per hour + $125,000 in office supply-related costs (2500 telefunders @ $50 each)). Thus, the total non-labor costs for all entities subject to the TSR is $12,575,000.[18]

Finally, staff believes that the estimated 4,200 inbound telemarketing entities choosing to comply with the Rule through written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the required disclosures to that written information likely requires no supplemental non-labor expenditures.

William Blumenthal,

General Counsel.

[FR Doc. 06–4630 Filed 5–16–06; 8:45 am]

BILLING CODE 6750–01–P

[14] *See* 67 FR 37366 (May 29, 2002). As stated in the Original User Fee NPRM, this estimate is likely to be conservative for PRA purposes. The OMB regulation defining "information" generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

[15] The January 20, 2006 Notice erroneously indicated $20,315,000.

[16] Staff continues to assume that clerical employees will submit the minimal identifying information. See 68 FR 16238, 16246 (April 3, 2003).

[17] The January 20, 2006 Notice erroneously indicated $5,613,000.

[18] Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for Civil Rights; The Patient Safety and Quality Improvement Act of 2005; Delegation of Authority

Notice is hereby given that I have delegated to the Director of the Office of Civil Rights (OCR), with authority to redelegate, the authority to enforce the privilege and confidentiality protections of section 922, Title IX of the Public Health Service Act, as amended by the patient Safety and Quality Improvement Act of 2005 (the Act). Pursuant to this delegation, the OCR Director shall have the authority:

A. To impose civil monetary penalties pursuant to section 922(f) of the Act;

B. To administer an enforcement program regarding the privilege and confidentiality protections of section 922 of the Act (the Enforcement

Program), including but not limited to investigations of compliance, actions to obtain compliance, and determinations to penalize noncompliance;

C. To provide technical assistance and public information in the administration of the Enforcement Program;

D. To make decisions regarding the interpretation of the privilege and confidentiality protections at section 922 of the Act in the administration of the Enforcement Program; and

E. To develop, for issuance by the Secretary, regulations regarding such Enforcement Program.

All other authorities under Title IX of the Public Health Service Act, except those retained by the Secretary, have been delegated to the Director, Agency for Healthcare Research and Quality.

This delegation excludes the authority to submit reports to the Congress, and shall be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirmed and ratified any actions taken by the OCR Director or his subordinates which involved the exercise of the authorities delegated herein prior to the effective day of this delegation.

Dated: April 13, 2006.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. 06–4578 Filed 5–16–06; 8:45 am]

BILLING CODE 4153–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–220]

Public Health Assessments Completed: January 2006–March 2006

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from January 2006 through March 2006. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on March 29, 2006 [71 FR 15747]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the ATSDR Records Center, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments are often available for public review at local repositories such as libraries in corresponding areas. Many public health assessments are available through ATSDR's Web site at *http://www.atsdr.cdc.gov/HAC/PHA/*. In addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553–6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

. Between January 2006, and March 2006, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

Florida

Naval Air Station Pensacola—(PB2006–107464)

Missouri

Newton County Mine Tailings Site—(PB2006–102431)

New York

Ellenville Scrap Iron and Metal—(PB2006–105504)

North Carolina

Ram Leather Care Site—(PB2006–105506)

Ohio

Peters Cartridge Factory—(PB2006–107529)

Oregon

Portland Harbor—(PB2006–107530)

Wisconsin

PCB Contaminated Sediment in the Lower Fox River and Green Bay—(PB2006–107466)

Non-NPL Petitioned Sites

Florida

Former Ponce de Leon Golf Course—(PB2006–105505)

Former St. Joe Products Site (a/k/a St. Joe Paper Mill)—(PB2006–103493)

North Suwannee Community (113th Street Area)—(PB2006–107465)

Raleigh Street Dump—(PB2006–103494)

Idaho

Southeast Idaho Phosphate Mining Resource Area—(PB2006–105560)

Illinois

St. Louis Smelting and Refining—(PB2006–102415)

Massachusetts

Milham Brook Area (a/k/a Glen Street Neighborhood)—(PB2006–105559)

Dated: May 10, 2006.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E6–7480 Filed 5–16–06; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0021]

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

National Coal Workers Autopsy Study (42 CFR 37.204)—Extension (0920–0021)—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention.

Background and Brief Description

Under the Federal Coal Mine Health and Safety Act of 1977, PL 91–173 (amended the Federal Coal Mine and Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program for underground coal miners, the National Coal Workers Autopsy Study (NCWAS). The consent release and history form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. The basic reason for the post-mortem examination is both epidemiological and clinical research. A minimum of essential information is collected regarding the deceased miners, including occupational history and smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung disease) and pathologic changes and will be correlated with x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to generate a statement on the invoice affirming that no other compensation is received for the autopsy. The consent release and history form takes the next-of-kin approximately 15 minutes to complete. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. There are no costs 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 hrs.)	Total burden hours
Pathologist Invoice	50	1	5/60	4
Pathologist Report	50	1	5/60	4
Next-of-Kin	50	1	15/60	13
Total				21

Dated: May 10, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–7478 Filed 5–16–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06BF]

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

Assessment and Evaluation of the Role of Care Coordination (Case Management) in Improving Access and Care within the Spina Bifida Clinic System—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Spina bifida is one of the most common birth defects, affecting approximately 2 per 10,000 live births in the United States annually. Providing care for people who are born with spina bifida is complex and challenging. Studies have shown that care coordination is beneficial for individuals with complex health conditions such as cystic fibrosis and sickle cell anemia. However, the extent to which care coordination is effective for assisting individuals with spina bifida is currently unknown. To learn more about what factors may help or act

as barriers to the provision of effective care coordination for individuals with spina bifida, CDC's National Center on Birth Defects and Developmental Disabilities proposes to conduct a study using focus groups and interviews. The proposed activity is part of the National Spina Bifida Program mandated in Section 317C of the Public Health Service Act (42 U.S.C. 247b–4)

Researchers will visit 10 spina bifida clinics nationwide. At each clinic, 1 focus group with approximately 8 caregivers of children with spina bifida will be conducted. Each focus group will last about 2 hours. At each clinic, approximately 5 clinical staff will be interviewed; each interview will take approximately 45 minutes. Focus group and interview respondents will be asked a variety of questions related to care coordination for individuals with spina bifida including how care is coordinated in the clinic, barriers and facilitators to the provision of care coordination, the effectiveness of care coordination, and recommendations for improving care coordination. All responses to the focus groups and interviews will be treated in a private manner.

There will be no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of reponses per respondent	Average burden per response	Total burden hours
Caregiver screener	100	1	15/60	25
Caregiver focus group	80	1	2	160
Clinic staff telephone screener	55	1	10/60	9
Clinic staff interview	50	1	45/60	38
Total				232

Dated: May 10, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–7482 Filed 5–16–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following Federal Committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Time and Date: 10 a.m.–11 a.m., May 17, 2006.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: To discuss the absence of an official 2-dose recommendation for mumps vaccine.

Supplementary Information: This conference call is scheduled to begin at 10 a.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–857–5009 and reference passcode 9393375.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register.**

For Further Information Contact: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, E–05, Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: May 12, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–7555 Filed 5–16–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–5420–FR–L030; AA–85443, AA–85444, AA–85445, AA–85447]

Notice of Applications for Recordable Disclaimers of Interest for Lands Underlying Chilkat Lake, Chilkat River, Tsirku River, and Klehini River in Southeast Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has filed applications for recordable disclaimers of interest in certain lands underlying Chilkat Lake, Chilkat River, Tsirku River, and Klehini River in Southeast Alaska by the United States.

DATES: Comments on the State of Alaska's applications should be submitted on or before August 15, 2006. Comments on the BLM Draft Navigability Report should be submitted on or before July 17, 2006.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Callie Webber at 907–271–3167 or you may visit the BLM recordable disclaimer of interest Web site at *http://www.ak.blm.gov.*

SUPPLEMENTARY INFORMATION: On May 12, 2004, the State of Alaska (State) filed applications for recordable disclaimers of interest pursuant to Section 315 of the Federal Land Policy and

Management Act and the regulations contained in 43 CFR Subpart 1864 for lands underlying Chilkat Lake (AA–85433), Chilkat River (AA–85444), Klehini River (AA–85445), and Tsirku River (AA–85447), all located in southeast Alaska. A recordable disclaimer of interest, if issued, will confirm the United States has no valid interest in the subject lands. The notice is intended to notify the public of the pending applications and the State's grounds for supporting it. The State asserts that these water bodies are navigable and under the Equal Footing Doctrine, Submerged Lands Act of 1953, Alaska Statehood Act, and the Submerged Lands Act of 1988, ownership of these submerged lands automatically passed from the United States to the State at the time of statehood in 1959.

On June 23, 2005, the State amended its Chilkat Lake application to include Clear Creek. The State's application for Chilkat Lake (AA–85443) is for "all submerged lands lying within the bed of Clear Creek between the ordinary high water line of the left and right banks in Sections 11 and 14, Township 29 South, Range 56 East, and all submerged lands encompassed by the ordinary high water line of Chilkat Lake, in Township 30 South, Range 57 East, Copper River Meridian, Alaska." The State's application for Chilkat River (AA–85444) is for "all submerged lands lying within the bed of the Chilkat River between the ordinary high water lines of the left and right banks, and all interconnecting sloughs of the Chilkat River, beginning at the Alaska/Canada International border within Township 25 South, Range 56 East, Copper River Meridian, Alaska downstream to all points of confluence with Chilkat Inlet within Townships 30 and 31 South, Range 59 East, Copper River Meridian, Alaska." The State's application for Klehini River (AA–85445) is for "all submerged lands within the bed of the Klehini River between the ordinary high water lines of the left and right banks, and all interconnecting sloughs of the Klehini River, beginning at the Alaska/Canada border within Township 28 South, Range 53 East, Copper River Meridian, Alaska downstream to its confluence with Chilkat River within Township 28 South, Range 56 East, Copper River Meridian, Alaska." The State's application for Tsirku River (AA–85447) is for "all submerged lands lying within the bed of the Tsirku River between the ordinary high water lines of the left and right banks, and all interconnecting sloughs of the Tsirku River, beginning in Section 1, Township 30 South, Range 53 East, Copper River Meridian, Alaska downstream to its confluence with Chilkat River within Townships 28 and 29 South, Ranges 56 and 57 East, Copper River Meridian, Alaska." The State did not identify any known adverse claimant or occupant of the affected lands.

A final decision on the merits of the applications will not be made before August 15, 2006. During the 90-day period, interested parties may comment upon the State's applications, AA–85443, AA–85444, AA–85445, and AA–85447, and supporting evidence. Interested parties may comment on the evidentiary evidence presented in the BLM's Draft Navigability Report on or before July 17, 2006.

Comments, including names and street addresses of commenters, will be available for public review at the Alaska State Office (see address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: February 28, 2006.

Russell D. Blome,

Acting Chief, Branch of Lands and Realty.

[FR Doc. E6–7400 Filed 5–16–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–5420–FR–L036; FF–94614 and FF–94615]

Notice of Applications for Recordable Disclaimers of Interest for Lands Underlying the Nabesna River and the Chisana River in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has filed applications for recordable disclaimers of interest in certain lands underlying the Nabesna River and the Chisana River in Alaska by the United States.

DATES: Comments on the State of Alaska's applications should be submitted on or before August 15, 2006. Comments on the BLM Draft Summary Report should be submitted on or before July 17, 2006.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Jack Frost at 907–271–5531 or you may visit the BLM recordable disclaimer of interest Web site at *http://www.ak.blm.gov.*

SUPPLEMENTARY INFORMATION: On October 3, 2005, the State of Alaska (State) filed applications for recordable disclaimers of interest pursuant to Section 315 of the Federal Land Policy and Management Act and the regulations contained in 43 CFR subpart 1864 for lands underlying Nabesna River (FF–94614), approximately 85 river miles, and Chisana River (FF–94615), approximately 116 river miles. The Nabesna and Chisana Rivers are both located within the Tanana River region of Alaska. A recordable disclaimer of interest, if issued, will confirm the United States has no valid interest in the subject lands. The notice is intended to notify the public of the pending applications and the State's grounds for supporting it. The State asserts that the Nabesna and Chisana Rivers are navigable and under the Equal Footing Doctrine, Submerged Lands Act of 1953, Alaska Statehood Act, and the Submerged Lands Act of 1988, ownership of these submerged lands automatically passed from the United States to the State at the time of statehood in 1959.

The State's application for Nabesna River (FF–94614) is for "all submerged lands lying within the bed of the Nabesna River, between the ordinary high water lines of the left and right banks, from its origins at the Nabesna Glacier within Township 5 North, Ranges 13 and 14 East, Copper River Meridian, Alaska, downstream to its confluence with the Tanana River in Township 15 North, Range 19 East, Copper River Meridian, Alaska." The State's application for Chisana River (FF–94615) is for "all submerged lands lying within the bed of Chisana River between the ordinary high water lines of the left and right banks from its origin at the Chisana Glacier within Township 3 North, Range 17 East, Copper River Meridian, Alaska, downstream to its confluence with the Tanana River in Township 15 North, Range 19 East, Copper River Meridian, Alaska." The Chisana River application also includes the unnamed channel that connects Mark Creek with the Chisana River in Township 14 North, Ranges 19 and 20 East, Copper River Meridian, Alaska. The State did not identify any known

adverse claimant or occupant of the affected lands.

A final decision on the merits of the applications will not be made before August 15, 2006. During the 90-day period, interested parties may comment upon the State's applications, FF–94614 and FF–94615, and supporting evidence. Interested parties may comment on the evidentiary evidence presented in the BLM's Draft Summary Report on or before July 17, 2006.

Comments, including names and street addresses of commenters, will be available for public review at the Alaska State Office (see address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: February 28, 2006.

Russell D. Blome,

Acting Chief, Branch of Lands and Realty.

[FR Doc. E6–7401 Filed 5–15–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–06–1210–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet June 9, 2006, from 1 p.m. until 5:30 p.m., in Blanding, Utah.

ADDRESSES: The Utah BLM Resource Advisory Council will meet at the Blanding Arts Center Auditorium, 715 West 200 South, Blanding, Utah.

FOR FURTHER INFORMATION CONTCT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah, 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The RAC will be given updates on the status of the SITLA Exchange Proposal and San Rafael Swell RAC Subgroup; a review and discussion on the Factory Butte Subgroup report; a briefing on the Federal Land Recreation Enhancement Act and the interagency agreement for use of Recreation RACs; and, an overview of the historical overview of the Antiquities Act. A public comment period, where members of the public may address the RAC, is scheduled from 4:45 p.m.–5:15 p.m. Written comments may be sent to the Bureau of Land Management address listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: May 4, 2006.

Gene R. Terland,

Acting State Director.

[FR Doc. E6–7458 Filed 5–16–06; 8:45 am]

BILLING CODE 4310–DK–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Final)]

Artists' Canvas from China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of artists' canvas, provided for in subheadings 5901.90.20 and 5901.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted this investigation effective April 1, 2005, following receipt of a petition filed with the Commission and Commerce by Tara Materials, Inc., of Lawrenceville, GA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of artists' canvas from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 17, 2005 (70 FR 69781). The hearing was held in Washington, DC, on March 28, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 2006. The views of the Commission are contained in USITC Publication 3853 (May 2006), entitled *Artists' Canvas from China: Investigation No. 731–TA–1091 (Final).*

Issued: May 12, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7500 Filed 5–16–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson dissenting.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act ("CAA")

Pursuant to 28 CFR 50.7, notice is hereby given that on May 5, 2006, a Consent Decree in the case of *United States of America* v. *Coastal Lumber Company*, Civil Action No. 4:01–cv–238 SPM, was lodged in the United States District Court for the Northern District of Florida.

In this action, the United States sought injunctive relief and civil penalties under Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b). The alleged violations include the failure to install pollution control devices and obtain permits required by the CAA, and failure to comply with a testing order issued by EPA pursuant to Section 114 of the CAA, 42 U.S.C. 7414, at Coastal's plywood manufacturing facility, located in Havana, FL. Under the proposed Consent Decree, Coastal will conduct emissions tests, the results of which will be used to determine if Coastal is required to install pollution controls at the facility. The Consent Decree also requires that Coastal pay a civil penalty of $60,000 in connection with its failure to comply with the test

order issued by EPA pursuant to Section 114 of the CAA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611; and refer to *United States of America* v. *Coastal Lumber Company,* DOJ # 90–5–2–1–06361. The proposed Consent Decree may be examined at the United States Environmental Protection Agency, EPA Region IV, 61 Forsyth Street, Atlanta, GA 30303, ATTN: Gregory Tan. During the comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost for 51 pages) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–4611 Filed 5–16–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and RCRA

Under 28 CFR 50.7, notice is hereby given that on May 11, 2006, a proposed Consent Decree in *United States and State of Texas* v. *City of Dallas,* Civil Action No. 3:06–CV–0845–B, was lodged with the United States District Court for the Northern District of Texas.

The United States alleged that the City of Dallas (the "City") violated the Clean Water Act, 33 U.S.C. 1251–1387, by failing to fully and timely implement the City's storm water management program, part of the City's NPDES permit. The United States sought injunctive relief and civil penalties to address the Clean Water Act violations, and civil penalties for miscellaneous violations at City-owned facilities of the Solid Waste Disposal Act, 42 U.S.C. 6901–6992k, also known as the Resource Conservation and Recovery Act ("RCRA").

Under the Consent Decree, the City will (i) pay a civil penalty of $800,000, (ii) spend at least $1.2 million on two supplemental environmental projects, (iii) hire and keep on staff specified numbers and kinds of employees to implement the City's storm water program, (iv) carry out inspections of industrial facilities, construction sites, and storm water outfalls at specified intervals, and (v) implement an environmental management system to twelve facilities.

The first supplemental environmental project requires the City to spend at least $675,000 to construct a wetland, at least 60-acres in size, along the Trinity River downstream of Sylvan Avenue in the vicinity of the Pavaho pump station. Before beginning construction, the City must submit a detailed plan for review by the U.S. Environmental Protection Agency ("EPA"). The second project requires the installation of a small wetland near Cedar Creek, that, in conjunction with small biological treatment units, shall be designed to treat runoff from at least 15 acres of the Zoo. The treatment train will be designed to maximize the amount of treated water that can be used in drip irrigation at the Zoo and to safely discharge water not used in irrigation to Cedar Creek.

The United States Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Texas* v. *City of Dallas,* D.J. Ref. No. 90–5–1–1–08359.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. If requesting from the Consent Decree Library a full copy of the Consent Decree including all its attachments, please enclose a check in the amount of $69.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. If requesting a copy of the Consent Decree with all attachments except Appendix H (the City's Storm Water Management Plan) and I (February 2004 Compliance Order), please enclose a check in the amount of $19.75 payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4582 Filed 5–16–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Scarsella Brothers, Inc. Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on May 3, 2006, a proposed Consent Decree ("Consent Decree") with Scarsella Brothers, Inc., in the case of *United States* v. *Scarsella Brothers, Inc. and the Idaho Department of Transportation,* Civil Action No. 04–428, has been lodged with the United States District Court for the District of Idaho.

This Consent Decree resolves the United States' pending claims against Scarsella Brothers Inc., pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), for violations of the Act's requirements governing the discharge of storm water. The violations occurred during a road building project in northern Idaho. Under the terms of the Scarsella Consent Decree, Scarsella shall (1) Pay a civil penalty of $400,000; (2) increase the training required of its personnel for projects in the State of Idaho; and, (3) make payments to a citizen group that intervened in this action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Scarsella Brothers, Inc. and the Idaho Department of Transportation,* Civil Action No. 04–428, D.J. Ref. 90–5–1–1–08052.

The Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Washington Park Plaza IV, 800 Park Blvd., Suite 600, Boise, Idaho, and at U.S. EPA Region 10, 1200 6th Ave., Seattle, Washington. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web

site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4609 Filed 5–16–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Idaho Department of Transportation, Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on May 3, 2006, a proposed Consent Decree ("Consent Decree") with the Idaho transportation Department in the case of *United States* v. *Scarsella Brothers, Inc. and the Idaho Department of Transportation*, Civil Action No. 04–428, has been lodged with the United States District Court for the District of Idaho.

This Consent Decree resolves the United States' pending claims against Idaho Transportation Department pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), for violations of the Act's requirements governing the discharge of storm water. The violations occurred during a road building project in northern Idaho. Under the terms of the ITD Consent Decree ITD shall: (1) Pay a civil penalty of $495,000 and (2) undertake various actions which shall increase the training of its employees and increase the nature and quality of its efforts to inspect for and comply with storm water regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Scarsella Brothers, Inc. and the Idaho Department of Transportation*, Civil Action No. 04–428, D.J. Ref. 90–5–1–1–08052.

The Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Washington Park Plaza IV, 800 Park Blvd., Suite 600, Boise, Idaho, and at U.S. EPA Region 10, 1200 6th Ave., Seattle, Washington. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request ot Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert Maher,

Assisant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4610 Filed 5–16–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,219]

Action Staffing; A Subdivision of American Services Working On-Site at Westpoint Stevens, Inc. Now Known as Westpoint Home, Inc.; Bed Products Division Clemson, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2006 in response to a worker petition filed by a state agency on behalf of workers at Action Staffing, a subdivision of American Services, working on-site at WestPoint Stevens, Inc., now known as WestPoint Home, Inc., Bed Products Division, Clemson, South Carolina.

The petitioning group of workers is covered by an active certification, (TA–W–56,333) which expires on February 9, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 3rd day of May, 2006.

Elliot S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7514 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,290]

Allegheny Color Corp./Apollo Colors, Inc.; Ridgway, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2006 in response to a worker petition filed by a company official on behalf of workers of Allegheny Color Corp./ Apollo Colors, Inc., Ridgway, Pennsylvania.

The petitioning group of workers is covered by an active certification, (TA–W–58,754) which expires on March 30, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of May, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7515 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,644; TA–W–58,644A]

Corinthian, Inc.; Sewing Department; Corinth, MS and Boonesville, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 3, 2006, applicable to workers of Corinthian, Inc., Sewing Department, Corinth, Mississippi. The notice was

published in the **Federal Register** on February 22, 2006 (71 FR 9160).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Workers at the Corinth, Mississippi facility and Boonesville, Mississippi facility of the subject firm sew upholstery for furniture.

Information provided by the company shows that workers are sent back and forth between the Corinth, Mississippi facility and the Boonesville, Mississippi facility; therefore, workers are not separately identifiable by product line or by location. Worker separations have occurred at the Corinth, Mississippi and Boonesville, Mississippi facilities of the Sewing Department, Corinthian, Inc.

Accordingly, the Department is amending the certification to cover workers of the Boonesville, Mississippi location of the Sewing Department, Corinthian, Inc.

The intent of the Department's certification is to include all workers of Corinthian, Inc. Sewing Department who were adversely affected by increased company imports.

The amended notice applicable to TA–W–58,644 is hereby issued as follows:

All workers of Corinthian, Inc., Sewing Department, Corinth, Mississippi (TA–W–58,644) and Corinthian, Inc., Sewing Department, Boonesville, Mississippi (TA–W–58,644A), who became totally or partially separated from employment on or after January 12, 2005, through February 3, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7512 Filed 5–16–06; 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–59,054; Epson Portland, Inc., A Subsidiary of Seiko Epson Corp., On-Site Leased Workers of Volt Services, Hillsboro, OR: March 14, 2005.

TA–W–59,209; SLM Electronics, Division of St. Louis Music, Inc., Yellville, AR: April 12, 2005.

TA–W–59,240; Coleman Cable, Inc., Automotive Division, Future Force, Miami Lakes, FL: April 18, 2005.

TA–W–59,269; Gemeinhardt Company LLC, Elkhart, IN: May 26, 2006.

TA–W–59,012; Reitz Tool, Inc., Cochranton, PA: March 14, 2005.

TA–W–59,025; Bauhaus USA, Amory, MS: February 21, 2005.

TA–W–59,083; TI Automotive Systems, LLC, Brake and Fuel Division, Warren, MI: April 10, 2006.

TA–W–59,114; King Louie International, Grandview, MO: March 22, 2005.

TA–W–59,115; Pleasant Hill Mfg. Co., A Division King Louie International, Baxter Springs, KS: March 22, 2005.

TA–W–59,116; Pro Fit Cap Co., A Division King Louie International, Paola, KS: March 22, 2005.

TA–W–59,133; GKN Sinter Metals, Romulus Division, Romulus, MI: March 13, 2005.

TA–W–59,143; Fiber Industries, Inc., A Subsidiary of Wellman, Pinnacle Staffing and BE&K, Darlington, SC: March 22, 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–59,172; Zohar Waterworks, LLC, dba Tri Palm International, Solutions Staffing, Columbus, OH: April 7, 2005.

TA–W–59,182; Artisans, Inc., Glen Flora, WI: April 2, 2006.

TA–W–59,208; TRW Automotive U.S. LLC, Engineered Fasteners and Components, On-Site Leased Workers of Adecco, Westminster, MA: April 12, 2005.

TA–W–58,875; Accenture, LLP, Bell South Center, Atlanta, GA: February 9, 2005.

TA–W–58,875A; Accenture, LLP, Inforum Building, Atlanta, GA: February 9, 2005.

TA–W–58,875B; Accenture, LLP, Peachtree Corners #7, Norcross, GA: February 9, 2005.

TA–W–58,875C; Accenture, LLP, Peachtree Corners #10, Norcross, GA: February 9, 2005.

TA–W–58,875D; Accenture, LLP, Peachtree Corners #11, Norcross, GA: February 9, 2005.

TA–W–58,875E; Accenture, LLP, Colonade, Birmingham, AL: February 9, 2005.

TA–W–58,875F; Accenture, LLP, Data Center, Birmingham, AL: February 9, 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–59,107; Guilford Mills, Inc., Friendship Plant, Greensboro, NC: March 28, 2005.

TA–W–59,107A; Guilford Mills, Inc., Administrative Office, Greensboro, NC: March 28, 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.

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.

TA–W–59,143A; Fiber Industries, Inc., A Subsidiary of Wellman, Fort Mill, SC.

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.

TA–W–59,266; Commercial Vehicle Group, formerly Monona Wire Corp., EMD–Spring Green Div., Spring Green, WI.

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–58,936; Book Covers, Inc., A Division of Newark Group Graphicboard Products, Franklin, OH.

TA–W–58,965; Monmouth Ceramics, Inc., dba Western Stoneware, A & D Staffing & Genie, Monmouth, IL.

TA–W–58,967; Spectrum Brands, Rayovac Division, Fennimore, WI.

TA–W–59,067; Coe Manufacturing, Tigard, OR.

TA–W–59,070; Tate Lumber Co., Inc., Red Oak, VA.

TA–W–59,080; Tech Sew Manufacturing, New York, NY.

TA–W–59,091; Eaton Corporation, Torque Control Products Division, Marshall, MI.

TA–W–59,097; Wolverine, Proctor and Schwartz, Merrimac, MA.

TA–W–59,101; Silicon Graphics, Manufacturing Division, Chippewa Falls, WI.

TA–W–59,102; International Malting Co., LLC (I.M.C.), Chicago, IL.

TA–W–59,124; Regency Plastics, A Subsidiary of Gemini Group, On-Site Leased Workers of Manpower, McAllen, TX.

TA–W–59,223; General Motors Corp., General Motors Technical Center, Body-In-White Dept, Warren, MI.

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–59,078; Hexion Specialty Chemicals, FFP Division, On-Site Leased Workers of Express Personnel, High Point, NC.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,111; Eastman Kodak Co., United States and Canada Finance Department, Rochester, NY.

TA–W–59,123; Solectron, Purchasing Division, Creedmoor, NC.

TA–W–59,134; Tillmann Tool and Die, Breckenridge, MN.

TA–W–59,199; Mechanical Products, Jackson, MI.

TA–W–59,226; Werner Co., Anniston, AL.

TA–W–59,255; Regal Manufacturing Co., Inc., Hickory, NC.

TA–W–59,272; Weyco Group, Beaver Dam, WI.

TA–W–59,280; Enesco Group, Inc., Elk Grove Village, IL.

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 issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

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 issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

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–59,143A; Fiber Industries, Inc., A Subsidiary of Wellman, Fort Mill, SC.
TA–W–59,266; Commercial Vehicle Group, formerly Monona Wire Corp., EMD–Spring Green Div., Spring Green, WI.
TA–W–58,936; Book Covers, Inc., A Division of Newark Group Graphicboard Products, Franklin, OH.
TA–W–58,965; Monmouth Ceramics, Inc., dba Western Stoneware, A & D Staffing & Genie, Monmouth, IL.
TA–W–58,967; Spectrum Brands, Rayovac Division, Fennimore, WI.
TA–W–59,067; Coe Manufacturing, Tigard, OR.
TA–W–59,070; Tate Lumber Co., Inc., Red Oak, VA.
TA–W–59,080; Tech Sew Manufacturing, New York, NY.
TA–W–59,091; Eaton Corporation, Torque Control Products Division, Marshall, MI.
TA–W–59,097; Wolverine, Proctor and Schwartz, Merrimac, MA.
TA–W–59,101; Silicon Graphics, Manufacturing Division, Chippewa Falls, WI.
TA–W–59,102; International Malting Co., LLC (I.M.C.), Chicago, IL.
TA–W–59,124; Regency Plastics, A Subsidiary of Gemini Group, On-Site Leased Workers of Manpower, McAllen, TX.
TA–W–59,223; General Motors Corp., General Motors Technical Center, Body-In-White Dept, Warren, MI.
TA–W–59,078; Hexion Specialty Chemicals, FFP Division, On-Site Leased Workers of Express Personnel, High Point, NC.
TA–W–59,111; Eastman Kodak Co., United States and Canada Finance Department, Rochester, NY.
TA–W–59,123; Solectron, Purchasing Division, Creedmoor, NC.
TA–W–59,134; Tillmann Tool and Die, Breckenridge, MN.
TA–W–59,199; Mechanical Products, Jackson, MI.
TA–W–59,226; Werner Co., Anniston, AL.
TA–W–59,255; Regal Manufacturing Co., Inc., Hickory, NC.
TA–W–59,272; Weyco Group, Beaver Dam, WI.
TA–W–59,280; Enesco Group, Inc., Elk Grove Village, IL.

The Department as 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 as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,054; Epson Portland, Inc., A Subsidiary of Seiko Epson Corp., On-Site Leased Workers of Volt Services, Hillsboro, OR.
TA–W–59,208; TRW Automotive U.S. LLC, Engineered Fasteners and Components, On-Site Leased Workers of Adecco, Westminster, MA.
TA–W–58,875; Accenture, LLP, Bell South Center, Atlanta, GA.
TA–W–58,875A; Accenture, LLP, Inforum Building, Atlanta, GA.
TA–W–58,875B; Accenture, LLP, Peachtree Corners #7, Norcross, GA.
TA–W–58,875C; Accenture, LLP, Peachtree Corners #10, Norcross, GA.
TA–W–58,875D; Accenture, LLP, Peachtree Corners #11, Norcross, GA.
TA–W–58,875E; Accenture, LLP, Colonade, Birmingham, AL.
TA–W–58,875F; Accenture, LLP, Data Center, Birmingham, AL.

The Department as 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 9, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–7526 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,087]

Falcon Footwear Company, a Division of Magnum Hitech, Lewiston, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2006 in response to a worker petition filed by a company official on behalf of workers at Falcon Footwear Company, a division of Magnum HiTech, Lewiston, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 2nd day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7521 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 30, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 30, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/1/06 and 5/5/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59301	Marineland (Comp)	Moorpark, CA	05/01/06	04/26/06
59302	Integrated Services Analysts (State)	Dearborn, MI	05/01/06	04/28/06
59303	South Mountain Technologies (USA), Inc. (Comp)	Wilsonville, OR	05/01/06	04/24/06
59304	DeRoyal (Orthopedic) (Comp)	Dryden, VA	05/01/06	04/28/06
59305	PDS Technical Services, Inc. (Comp)	Irving, TX	05/01/06	04/24/06
59306	Liebert Corporated (State)	Irvine, CA	05/01/06	04/28/06
59307	Royal Oak (State)	Jacksonville, TX	05/01/06	04/28/06
59308	Michelin Tire Corp. (Wkrs)	Greenville, SC	05/01/06	04/13/06
59309	Rich's Rolling Pin, Inc. (Wkrs)	Pine Bluff, AK	05/01/06	04/28/06
59310	Motorola, Inc. (State)	Lawrenceville, GA	05/01/06	03/29/06
59311	Paxar (Comp)	Weston, WV	05/01/06	04/28/06
59312	Chicago Castings (Wkrs)	Cicero, IL	05/01/06	05/01/06
59313	DeFrancesco and Sons (State)	Firebaugh, CA	05/02/06	04/24/06
59314	Anritsu Instruments Co. (Comp)	Utica, NY	05/02/06	05/02/06
59315	Lear Corporation (Wkrs)	Walker, MI	05/02/06	04/20/06
59316	Sargent Art, Inc. (Comp)	Hazleton, PA	05/02/06	04/12/06
59317	Ascent/Son Mfg. (State)	San Jose, CA	05/02/06	04/18/06
59318	Vogue Wallcoverings (Comp)	Fitchburg, MA	05/03/06	05/02/06
59319	Parker and Harper Co., Inc. (Comp)	Worcester, MA	05/03/06	05/02/06
59320	Artee-Wrap Spun Yarns (Comp)	Lincolnton, NC	05/03/06	05/02/06
59321	Vails Gate Manufacturing, LLC (State)	New York, NY	05/03/06	04/28/06
59322	Frame Builders Industries (Comp)	Thomasville, NC	05/03/06	05/01/06
59323	Moore Wallace, Inc. (Comp)	Monroe, WI	05/03/06	04/28/06
59324	Hiawatha Land Tool, Inc. (State)	Kasson, MN	05/03/06	05/03/06
59325	Stanco Metal Products, Inc. (State)	Grand Haven, MI	05/03/06	04/27/06
59326	Dura Art Stone, Inc. (Union)	Fontana, CA	05/04/06	05/03/06
59327	Stravina Operating Co., LLC (Comp)	Chatsworth, CA	05/04/06	04/07/06
59328	Funny-Bunny Cachcach (State)	Santa Ana, CA	05/04/06	05/03/06
59329	Optical Electro Forming (State)	Clearwater, FL	05/04/06	05/02/06
59330	Carolina Mills, Inc. (Comp)	Lincolnton, NC	05/04/06	05/04/06
59331	Orpack-Stone Corp. (State)	Herrin, IL	05/04/06	05/04/06
59332	PTG Global (State)	Santa Ana, CA	05/04/06	05/04/06
59333	Superior Industries International, Inc. (State)	Van Nuys, CA	05/04/06	05/04/06
59334	Carson Industries (Wkrs)	Freeport, PA	05/04/06	05/04/06
59335	Smead Manufacturing Co. (Comp)	Logan, OH	05/04/06	05/04/06

[FR Doc. E6–7524 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,929]

Milprint, Inc., a Division of Bemis Company, Denmark, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of April 24, 2006, the United Steel Workers, Local 7–1203 (Union), requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination was issued on April 6, 2006. On April 18, 2006, the Department's Notice of determination was published in the **Federal Register** (71 FR 19900). The Union alleges that the subject firm increased imports of flexible packaging.

The Department has carefully reviewed the Union's request for reconsideration and has determined that the Department will conduct further investigation based on new information provided.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7522 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,895]

Slater Companies; Pawtucket, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2006 in response to a petition filed by the State of Rhode Island on behalf of workers at Slater Companies, Pawtucket, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 2nd day of May, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7520 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,252]

True North Foods, US, Inc.; Stratford, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 20, 2006 in response to a petition filed by a company official on behalf of workers at True North Foods, US, Inc., Stratford, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7516 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,333]

Westpoint Stevens, Inc.; Now Known as Westpoint Home, Inc; Bed Products Division Including On–Site Leased Workers of Action Staffing, a Subdivision of American Services Clemson, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 9, 2005, applicable to workers of the WestPoint Stevens, Inc., Bed Products Division, Clemson, South Carolina. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11704).

The certification was amended on August 17, 2005 to reflect the new ownership. The notice was published in the **Federal Register** on September 27, 2005 (70 FR 56494).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sheets and pillowcases.

New information shows that leased workers of Action Staffing, a subdivision of American Services were employed at the Clemson, South Carolina location of WestPoint Stevens, Inc. now known as WestPoint Home, Inc.

Based on these findings, the Department is amending this certification to include leased workers of Action Staffing, a subdivision of American Services working at WestPoint Stevens, Inc., now known as WestPoint Home, Inc., Clemson, South Carolina.

The intent of the Department's certification is to include all workers of WestPoint Stevens, Inc., now known as WestPoint Home, Inc., Bed Products Division who was adversely affected by increased imports.

The amended notice applicable to TA–W–56,333 is hereby issued as follows:

All workers of WestPoint Stevens, Inc., now known as WestPoint Home, Inc., Bed Products Division, including on-site leased workers of Action Staffing, a subdivision of American Services, Clemson, South Carolina, who became totally or partially separated from employment on or after January 11, 2004, through February 9, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–7513 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2005 Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC, May 5, 2006.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

November 21, 2005.

The Honorable John W. Snow, Secretary of the Treasury, Washington, DC 20220.

Dear Secretary Snow: Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2005. One is required with respect to the normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

Elaine L. Chao

Enclosures

Certification of States to the Secretary of the Treasury Pursuant to Section 3304(C) of The Internal Revenue Code Of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2005, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan
Hawaii	Minnesota
Mississippi	Puerto Rico
Missouri	Rhode Island
Montana	South Carolina
Nebraska	South Dakota
Nevada	Tennessee
New Hampshire	Texas
New Jersey	Utah
New Mexico	Vermont
New York	Virginia
North Carolina	Virgin Islands
North Dakota	Washington
Ohio West	Virginia
Oklahoma	Wisconsin
Oregon	Wyoming
Pennsylvania	

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Elaine L. Chao,

Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(B)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2005:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan
Hawaii	Minnesota
Mississippi	Puerto Rico
Missouri	Rhode Island
Montana	South Carolina
Nebraska	South Dakota
Nevada	Tennessee
New Hampshire	Texas
New Jersey	Utah
New Mexico	Vermont
New York	Virginia
North Carolina	Virgin Islands
North Dakota	Washington
Ohio	West Virginia
Oklahoma	Wisconsin
Oregon	Wyoming
Pennsylvania	

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. E6–7508 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The tenth meeting of the Federal Economic Statistics Advisory Committee will be held on June 9, 2006 in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists that are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9 a.m. Opening session.
9:30 a.m. New Data on the Services Sector.
1 p.m. Outliers in Data Produced and Used in Federal Statistical Agencies.
3 p.m. Priorities for future meetings.
3:30 p.m. American Time Use Survey (ATUS) and Non-market Accounts.
4:45 p.m. Conclude (approximate time).

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Statistics Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, DC the 10th day of May 2006.

Kathleen P. Utgoff,

Commissioner of Labor Statistics.

[FR Doc. E6–7509 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Perry County Coal Corporation

[Docket No. M–2006–009–C]

Perry County Coal Corporation, 1845 S. KY Hwy.15, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.364(a)(2) (Weekly examination) to its HZ4–1 Mine (MSHA I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner requests a modification of the existing standard to permit approved check points 5 and 5A to be relocated in the neutral entry on the Southwest Mains, and add check points 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, and 5N which will be located in the neutral entry in the Southwest Mains, due to hazardous roof and rib conditions. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Six M. Coal Company

[Docket No. M–2006–010–C]

Six M Coal Company, 647 South Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of paragraph (b) of 30 CFR 49.2 (Availability of mine rescue teams) to its No: 1 Slope Mine (MSHA I.D. No. 36–09138) located in Dauphin County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of reduction of two mine rescue teams with three members with one alternative for either team in lieu of two mine rescue teams with five members and one alternate each team. The petitioner asserts that to utilize five or more rescue team members in the mine's confined working places would result in a diminution of safety to both the miners at the mine and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Six M. Coal Company

[Docket No.M–2006–011–C]

Six M Coal Company, 647 South Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1202 and 1202–1(a) (Temporary notations, revisions, and supplements) to its No. 1 Slope Mine (MSHA I.D. No. 36–09138) located in Dauphin County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as the existing standard.

4. Twentymile Coal Company

[Docket No. M–2006–012–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (On-shift examination) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method of compliance to the taking of methane tests by means of an extendable probe. The petitioner proposes the following for use when equipment is operated inby the last open crosscut such as, but not limited to, spot roof-bolting and cleanup activities with a scoop or other mining equipment: (i) In working places before a continuous miner is taken into the place or energized, methane tests will be taken at the face from under permanent roof support or when such test is not appropriate because the last row of permanent roof support or when such test is not appropriate because the last row of permanent support is sufficiently back from the face, using a probe with a maximum extension of 16 feet inby the second row of supports. If the probe is used, a methane test will be taken with an on-board methane detection system which draws a sample from the face to be performed once the miner is trammed to a location beyond supported roof; (ii) in working places before a roof bolter, scoop or other equipment is taken into the place or energized inby the last open crosscut but outby the last row of bolts, before the equipment it taken into the place or energized, methane tests will at the face from under permanent roof support or when such test is not appropriate because the last row of permanent support is sufficiently back from the face, using a probe 16 feet inby the second row of bolts. The methane tests at the last row of permanent roof supports will be taken every 20 minutes with the equipment as energized unless the equipment is inby the face ventilation device. If so, a probe will be used to check for methane 16 feet inby the second row of bolts; and (iii) in working places before a roof bolter is taken into the place or energized inby the last open crosscut and inby the last row of bolts, before the equipment is taken into the place or energized, methane tests will be taken at the face from under permanent roof support, or when such test is not appropriate because the last row of permanent support is sufficiently back from the face using a probe that extends 16 feet inby the second row of bolts, and a machine-mounted methane monitor will be installed on the roof bolter using the specific procedures listed in the this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Twentymile Coal Company

[Docket No. M–2006–013–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.362(a)(2) (On-shift examination) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examining of dust control parameters. The petitioner proposes to have a certified person conduct the examination as required in 30 CFR 75.362(a)(2). The certified persons will have readily available to them pressure gauges and similar devices that are useful in conducting the examinations. The examinations will be conducted on the shift prior to the first production shift within three hours of the end of the shift by experienced personnel qualified to perform such examinations, and any potential hazards will be identified. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Twentymile Coal Company

[Docket No. M–2006–014–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1902(c) (Underground diesel fuel storage-general requirements) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit the use of additional temporary underground diesel fuel storage areas. The petitioner proposes to utilize additional temporary underground diesel fuel storage areas, particularly, but not limited to, so that it can perform work in its tailgate such as removing belt structure, installing seals, and rock dusting. The petitioner states that the temporary fuel storage will be equipped with an automatic fire suppression system; a carbon monoxide sensor will be installed immediately downwind from the station which will be linked to the mine-wide atmospheric monitoring system; the temporary fuel storage area will be located in an area of the mine in a separate split of air from any active working sections; and the temporary fuel storage area will be vented to the return. The petitioner further states that the location of the storage area will have access to two separate and distinct escapeways, one of which contains intake air and will be either in the entry where the fuel storage area is located, or one crosscut inby or outby the area through an open crosscut, a man-door, or equipment door. The petitioner has listed additional specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Twentymile Coal Company

[Docket No. M–2006–015–C]

Twentymile Coal Company, Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.324 (Intentional changes in the ventilation system) to its Foidel Creek Mine (MSHA I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit the temporary reversal of the air in the belt entry during non-production work in the belt entry, or because of the necessity of emergency access for belt breakage, coal spillage, or roof conditions that require access without having to remove persons from the mine or de-energize power for the affected area. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail: *zzMSHA-Comments@dol.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before June 16, 2006.

Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 10th day of May 2006.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6–7469 Filed 5–16–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards, rank awards and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Kent E. Baum, Jill Crumpacker, Patricia E. Gallagher, John Lennon, Lawrence Roffee, and Charles H. Schneider from May 11, 2006 to May 11, 2008.

FOR FURTHER INFORMATION CONTACT: Phyllis A. Vessels, Human Resources Specialist, National Capital Planning Commission, 401 Ninth Street, NW., Suite 500 North, Washington, DC 20004, (202) 482–7217.

Dated: May 10, 2006.

Barry S. Socks,

Chief Operating Officer.

[FR Doc. E6–7493 Filed 5–16–06; 8:45 am]

BILLING CODE 7520–01–P

NATIONAL SCIENCE FOUNDATION

Oversight Council for the International Arctic Research Center; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Oversight Council for the International Arctic Research Center, #9535.

Date/Time: June 5, 2006, 2 p.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 740, Arlington, VA 22230, with participation by teleconference.

Type of Meeting: Closed.

Contact Persons: Dr. Neil Swanberg, Program Director, Arctic System Science Program, Room 740 S, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 292–8029.

Purpose of Meeting: To provide advice and recommendations concerning a cooperative agreement between the National Science Foundation and the International Arctic Research Center.

Agenda: To evaluate and provide advice on an annual research plan submitted to the Arctic Science Section as part of a continuing cooperative agreement for the support of the center.

Reason for Closing: The annual operating plan being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–4598 Filed 5–16–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of May 15, 22, 29; June 5, 12, 19, 2006.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 15, 2006

Monday, May 15, 2006

12:55 p.m. Affirmation Session (Public Meeting). a. Pa'ina Hawaii, LLC, LBP–06–4, 63 NRC 99 (Jan. 24, 2006) (admitting three safety contentions and standing); LBP–06–12, 63 NRC__(March 24, 2006.

1 p.m Briefing on Status of Implementation of Energy Policy Act of 2005 (Public Meeting) (Contact: Scott Moore, (301) 415–7278).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

3:30 p.m. Discussion of Management Issues (Closed—Ex.2).

Tuesday, May 16, 2006

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). a. Hydro Resources, Inc. (In situ leach mining license), 40–8968–ML, concerning LBP–06–1 (PID—Radioactive Air Emissions) (Tentative).

9:30 a.m. Briefing on Results of the Agency Action Review Meeting—Reactors/Materials (Public Meeting) (Contact; Mark Tonacci, (301) 415–4045).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of May 22, 2006—Tentative

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.

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.

* 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@brc.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 11, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–4653 Filed 5–15–06; 11:54 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53786; File No. SR–Amex–2006–39]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Adoption of a Licensing Fee for Options on the Vanguard Dividend Appreciation VIPERs

May 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to 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 Amex. On May 9, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change, withdrew Amendment No. 1 to the proposed rule change and submitted Amendment No. 2 to the proposed rule change.[3] Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract licensing fee for the orders of specialists, registered options traders ("ROTs"), firms, non-member market makers, and broker-dealers in connection with options transactions on the shares of the Vanguard Dividend Appreciation VIPERs (symbol: VIG).

The text of the proposed rule change, as amended, is available on the Amex's Web site at *http://www.amex.com*, at the principal office of the 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, Amex 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. Amex 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

Amex proposes to adopt a per contract licensing fee for options on VIG. This fee change will be assessed on members commencing April 27, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange traded funds ("ETFs"), such as VIG. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-member market makers and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.[6]

The purpose of this proposal is to charge an options licensing fee in connection with options on VIG. Specifically, Amex seeks to charge an options licensing fee of $0.10 per contract side for the VIG options for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the VIG options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the VIG options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that the Amex, in recent years, has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[7] Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those market participants engaging in transactions in VIG options a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.[8] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment No. 2.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See, e.g.*, Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

[7] *See, e.g.*, Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[8] Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and

Continued

connection with the adoption of an options licensing fee for VIG options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable, given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act[9] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–39 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–Amex–2006–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–39 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7461 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

other charges among its members and issuers and other persons using its facilities.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53793; File No. SR–Amex–2005–103]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto Allowing Issuers of Listed Equity Securities, Structured Products, and Exchange Traded Funds a Right To Request a New Specialist

May 11, 2006.

On October 13, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 27 to give issuers of listed equity securities and structured products, as well as sponsors of exchange traded funds ("ETFs"), a right to request a new specialist. On January 26, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] On January 30, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] On February 17, 2006, Amex filed Amendment No. 3 to the proposed rule change.[5] On March 6, 2006, Amex filed Amendment No. 4 to the proposed rule change.[6] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 4, 2006.[7] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

I. Description of the Proposal

Amex Rule 27(e) currently gives the issuer of an equity security or a structured product and the sponsor of an ETF a one-time right to request a reallocation to a different specialist unit within twelve months after the listing of the security.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

[4] In Amendment No. 2, the Exchange made revisions to the purpose section of the proposed rule change to reflect changes to the text of Amex Rule 27(f) made in Amendment No. 1

[5] In Amendment No. 3, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

[6] In Amendment No. 4, the Exchange proposed minor technical changes to the text of Amex Rule 27(e) and (f).

[7] *See* Securities Exchange Act Release No. 53561 (March 29, 2006), 71 FR 16841.

The Exchange proposed to amend Amex Rule 27(e)(ii) to permit the issuer of an equity security or structured product or the sponsor of an ETF to request a specialist reassignment for "good cause" by filing a written notice ("Notice") with the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable. The Notice must indicate the specific issues prompting the request and any steps previously taken to attempt to address these issues. Amex proposes to define "good cause" as the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the securities; or any statements made publicly by the specialist unit that substantially denigrate the security.

Further, the proposed revisions to Amex Rule 27(e) would require that copies of the Notice be provided to the Chief Regulatory Officer of the Exchange ("CRO") and to the Exchange's Committee on Floor Member Performance. In addition, the subject specialist unit would be notified that a mediation is being commenced with respect to the request for reassignment, and would be provided a copy of the Notice. The specialist unit may submit a written response within two weeks ("Specialist Response Date"), which response must be provided to the CRO and the Committee on Floor Member Performance. If the specialist unit does not submit a response during this two-week time period, there will be no mediation. In such case, the Allocations Committee will be convened to reallocate securities pursuant to Amex Rule 27(b).

The CRO would review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee ("ROC") of the Exchange's Board of Governors. In addition, the Committee on Floor Member Performance would review the Notice and any specialist response. Prior to the commencement of the mediation, the Committee on Floor Member Performance would make any determination that "good cause" does not exist. A determination that "good cause" does not exist would preclude the commencement of a mediation. In this circumstance, the security would not be reallocated and the issuer or sponsor may request an appeal of the decision of the Committee on Floor Member Performance to be heard by the Amex Adjudicatory Council.[8] If the decision of the Committee on Floor Member Performance is upheld, then the security will not be reallocated.

The mediation of the issues that have arisen between the issuer or sponsor and the specialist unit may be conducted pending the outcome of the CRO's and, if applicable, the ROC's review of the request. However, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Notwithstanding reviews by the CRO, ROC and/or Committee on Floor Member Performance of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted. The Amex represents that reassignment may not occur without prior notice that the CRO has decided not to refer the matter to the ROC or that the ROC has determined that the change is appropriate.

A Mediation Committee would be appointed and would consist of at least one floor broker, one senior floor official, one upstairs governor, and two independent governors for each mediation.[9] The Mediation Committee would meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice. During the course of the mediation, the issuer or sponsor may conclude the mediation if it determines that it wishes to continue with the same specialist unit. In the alternative, after the expiration of one month from the time of the specialist's response, subject to the conclusion of any review by the CRO and ROC, the issuer or sponsor may file written notice, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. The new specialist unit would be selected by the Allocations Committee pursuant to Amex Rule 27(b).

Finally, the Exchange proposes to amend Amex Rule 27(f) to provide that, in addition to the circumstances provided for in the existing rule, the Allocations Committee would be convened to reallocate securities when an issuer or sponsor files a written notice requesting a change of specialist unit and the Mediation Committee orders reallocation pursuant to proposed paragraph (e)(viii) of Amex Rule 27, or an issuer or sponsor files a written notice requesting a change of specialist unit and the specialist unit does not submit a response.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act,[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, appropriately balances the need to revise the current Amex process by which issuers of equity securities or structured products or sponsors of ETFs request a new specialist with the need to incorporate appropriate procedures that are designed to provide that any such request is subject to mediation and review by the Exchange's Committee on Floor Member Performance and CRO and, if requested by the CRO, the ROC. While the proposal revises current time frame during which an issuer or sponsor may request a new specialist, it also introduces the involvement of the Exchange's Committee on Floor Member Performance and CRO to assure that the requested change of specialist unit is for a proper purpose. The Committee on Floor Member Performance and CRO would be provided copies of any Notice and response to such Notice by the specialist unit. When the CRO has

[8] *See* Article II, Section 7(a) of the Amex Constitution.

[9] The Exchange represents that the Mediation Committee would consist of at least one floor broker, at least one senior floor official, at least one upstairs governor, and at least two independent governors for each mediation. Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex and David Michehl, Special Counsel, Division of Market Regulation, Commission on May 11, 2006.

[10] 15 U.S.C. 78f(b).

[11] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

requested a review by the ROC, no change of specialist unit may occur until after the ROC makes a final determination that it is appropriate to permit such a change.

The ROC, in making its determination of whether to permit a change in specialist unit, may consider all relevant regulatory issues, including whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. The Amex Division of Regulation and Compliance and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted. Therefore, the Commission believes that the proposed process would provide an appropriate mechanism for the Exchange to maintain independent oversight over an issuer's or sponsor's request to change specialist units, to ascertain that such requests are confined to proper reasons, and to obtain a review by the ROC when appropriate.

The Commission notes that the proposed rule change requires the Mediation Committee to commence to meet with representatives of the issuer or sponsor and the specialist unit "as soon as practicable" after the Specialist Response Date and does not limit the Mediation Committee's attempt to mediate the matters indicated in the Notice. The proposal further provides that the issuer or sponsor may at any time file a written notice stating that it wishes to conclude the mediation because it wishes to continue with the same specialist unit. After the expiration of one month from the Specialist Response Date, the issuer or sponsor may file a notice that it wishes to proceed with the change of specialist unit. The Commission believes that the proposed process is designed to provide the issuer or sponsor and the specialist unit ample opportunity to attempt to resolve the issues that prompted the issuer or sponsor to seek a new specialist unit and to allow the issuer or sponsor to seek a new specialist unit a reasonable period of time after the issuer or sponsor files its Notice.

Accordingly, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2005–103), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7463 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53652A; File No. SR–Amex–2005–100]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Relating to the Establishment of a New Class of Registered Options Trader Called a Remote Registered Options Trader

May 11, 2006.

Correction

FR Doc. E6–5918, beginning on page 20422 in the issue of April 20, 2006,[1] incorrectly stated the Exchange's proposal to modify Amex Rule 958—ANTE, which governs options transactions of Registered Options Traders, Supplemental Registered Options Traders, and Remote Registered Options Traders. On page 20423, in the 3rd column, the incorrect portion of the order stated as follows:

"The proposed changes to Amex Rule 958—ANTE (f) provide that no member, while acting as an RROT, if also registered as a registered equity trader or registered equity market-maker, would be required to execute a proprietary Exchange option transaction on a Paired Security if during the preceding 60 minutes he has been in the Designated Stock Area where the related security is traded."

The corrected sentence reads as follows:

"The proposed changes to 958—ANTE (f) provide that no member, while acting as an RROT, if also registered as a registered equity trader or registered equity market-maker, would be permitted to execute a proprietary Exchange option transaction on a Paired Security if during the preceding 60 minutes he has been in the Designated Stock Area where the related security is traded."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7467 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Securities Exchange Act Release No. 53652 (April 13, 2006), 71 FR 20422.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53635A; File No. SR–Amex–2005–075]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments No. 2 and 3 Thereto Relating to the Establishment of a New Class of Registered Options Trader Called a Supplemental Registered Options Trader ("SROT")

May 11, 2006.

Correction

FR Doc. E6–5800, beginning on page 20144 in the issue of April 19, 2006,[1] incorrectly stated the Exchange's proposal to modify Amex Rule 935–ANTE, which governs the allocation of unexecuted contracts. On page 20144, in the 3rd column, the incorrect portion of the order stated as follows:

"However, when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System will allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 20% to an SROT interacting with its own firm's orders; (ii) 20% to the specialist; and (iii) the balance to registered options traders."

The corrected sentence reads as follows:

"However, when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System will allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 40% to an SROT interacting with its own firm's orders and (ii) the balance to registered options traders and to the specialist."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7468 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 53635 (April 12, 2006), 71 FR 20144.

[2] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53784; File No. SR–Amex–2006–41]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of the ProShares Trust

May 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 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, II, and III below, which Items have been prepared by the Exchange. On May 5, 2006, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Index Fund Shares") based on the following four (4) new funds of the ProShares Trust (the "Trust"): Ultra Short 500 Fund; Ultra Short 100 Fund; Ultra Short 30 Fund; and the Ultra Short Mid-Cap 400 Fund (the "Funds"). The listing of Index Fund Shares that seek to provide investment results that provide investment results that correspond to twice (*i.e.*, two times) the inverse of the underlying index's performance.

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, the 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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, pursuant to Amex Rule 1000A(b)(2), proposes to list and trade the Funds that seek to provide investment results that correspond to twice (or two times) the inverse or opposite (−200%) of the index's performance.

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act"), as well as under the Act. Index Fund Shares are defined in Amex Rule 1000A(b)(1) as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

Recent amendments adopting Amex Rule 1000A(b)(2) now permit the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance. Accordingly, consistent with Amex Rule 1000A(b)(2), the Exchange now proposes to list and trade Index Fund Shares seeking investment results that correspond to twice the inverse of the underlying index's performance.

The Commission recently approved the listing and trading of the Bullish and Bearish Funds (Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; Ultra Mid-Cap 400 Fund; Short500Fund; Short100 Fund; Short30 Fund; and Short Mid-Cap 400 Fund).[4] In particular, the Original Order provides that the Bearish Funds seek to provide investment results that correspond to the inverse of the relevant underlying index's performance. The Exchange's proposal seeks to expand the Bearish Fund offerings by permitting certain Index Fund Shares to such investments results that are two (2) times the inverse of the index.

The Exchange proposes to list under Amex Rule 1000A, the shares of the Funds. The Funds seek daily investment results, before fees and expenses, that correspond to twice the inverse (−200%) of the daily performance of the Standard and Poor's 500® Index ("S&P 500"), the Nasdaq-100® Index ("Nasdaq 100"), the Dow Jones Industrial Average℠ ("DJIA") and the S&P MidCap400™ Index ("S&P MidCap"), respectively. (These indexes are referred to herein as "Underlying Indexes").[5] If each of these Funds is successful in meeting its objective, the net asset value (the "NAV")[6] of shares of each Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day.

ProShare Advisors LLC is the investment advisor (the "Advisor") to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.[7] While the Advisor will manage

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 ("Amendment No. 1") replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) ("Original Order").

[5] Exchange-traded funds ("ETFs") based on each of the Underlying Indexes are listed and traded on the Exchange. *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992)(S&P 500 SPDR); 39143 (September 29, 1997), 62 FR 51917 (October 3, 1997)(DIAMONDS); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999)(QQQ); and 35689 (May 8, 1995), 60 FR 26057 (May 16, 1995)(S&P MidCap 400). The Statement of Additional Information ("SAI") for the Funds discloses that each Fund reserves the right to substitute a different Index. Substitution could occur if the Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the Index, or for any other reason determined in good faith by the Board. In such instance, the substitute index will attempt to measure the same general market as the current index. Shareholders will be notified (either directly or through their intermediary) in the event a Fund's current index is replaced. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b–4 filing with the Commission, which the Commission would have to approve to permit continued trading of the product based on a substitute index. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on May 10, 2006.

[6] The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4 p.m. Eastern Time ("ET").

[7] The Trust, Advisor and Distributor ("Applicants") have filed with the Commission an Application for an Order under Sections 6(c) and 17(b) of the 1940 Act (the "Application") for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. (File No. 812–12354). The Exchange states that information

Continued

each Fund, the Trust's Board of Trustees (the "Board") will have overall responsibility for the Funds' operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act.

SEI Investments Distribution Company (the "Distributor"), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. JPMorgan Chase Bank will act as the index receipt agent ("Index Receipt Agent"), for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List to the National Securities Clearing Corporation ("NSCC") and for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company ("DTC") and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Shares of the Funds issued by the Trust will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund (the "Shares").[8] Shares will be registered in book-entry form only, and the Trust will not issue individual share certificates. The DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Investment Objective of the Funds

The Funds will seek daily investment results, before fees and expenses, of double the inverse or opposite (−200%) of the Underlying Index. Each Fund will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Each Fund will rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, double the inverse or opposite of the investment results of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Fund will be devoted to such financial instruments and money market instruments, including U.S. government securities and repurchase agreements[9] (the "Money Market Instruments").

The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors as well as swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and Money Market Instruments.

While the Advisor will attempt to minimize any "tracking error" between the investment results of a particular Fund and the inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.[10] The Funds are expected to be highly inversely correlated to each Underlying Index and investment objective (−.95 or greater).[11] In each case, the Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified (inverse) multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor will seek to establish an investment exposure in each portfolio corresponding to each Fund's investment objective based upon its Portfolio Investment Methodology. The Exchange states that Portfolio Investment Methodology is a mathematical model based on well-established principles of finance that are widely used by investment practitioners, including conventional index fund managers.

As set forth in the Application, the Portfolio Investment Methodology was designed to determine for each Fund the portfolio investments needed to achieve its stated investment objectives. The Portfolio Investment Methodology takes into account a variety of specified criteria and data (the "Inputs"), the most important of which are: (1) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day, (2) the amount of required exposure to the Underlying Index, and (3) the positions in Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor pursuant to the methodology will then mathematically determine the end-of-day positions to establish the required amount of exposure to the Underlying Index (the "Solution"), which will consist of Financial Instruments and Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of Financial Instruments and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. ET on Tuesday.

The timeline for the Methodology is as follows. Authorized Participants ("APs" or "Authorized Participants") have a 3 p.m. ET cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4 p.m. ET cut-off for orders received via mail.[12] AP orders

provided in this Rule 19b–4 filing relating to the Funds is based on information included in the Application, which contains additional information regarding the Trust and Funds.

[8] The Fund is also registered as a business trust under the Delaware Corporate Code.

[9] Repurchase agreements held by the Funds will be consistent with Rule 2a–7 under the 1940 Act, *i.e.*, remaining maturities of 397 days or less and rated investment-grade.

[10] Several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) A Fund's expenses, including brokerage (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark index being held by a Fund and securities not included in the benchmark index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market; (4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's share prices being rounded to the nearest cent; (7) changes to the benchmark index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

[11] Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the benchmark index (investment objective). The statistical measure of correlation is known as the "correlation coefficient." A correlation coefficient of +1 indicates a high direct correlation while a value of −1 indicates a strong inverse correlation. A value of zero would mean that there is no correlation between the two variables.

[12] An Authorized Participant is either (1) a broker-dealer or other participant in the continuous

by mail are exceedingly rare. Orders are received by the distributor, SEI Corporation ("SEI") and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. ET the number of creation/redemption orders by APs for that day. Orders are then placed at approximately 3:40 p.m. ET as market-on-close (MOC) orders. At 4 p.m. ET, the Advisor will again look at the exposure to make sure that the orders placed are consistent with the Solution, and as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Description of Investment Techniques

In attempting to achieve its individual investment objectives, a Fund may invest its assets in Financial Instruments and Money Market Instruments (collectively, the "Portfolio Investments"). To the extent applicable, each Fund will comply with the requirements of the 1940 Act with respect to "cover" for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade. Each Fund will comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission (the "CFTC").[13]

Each Fund may enter into swap agreements and forward contracts for the purposes of attempting to gain exposure to the equity securities of its Underlying Index without actually transacting such securities. The Exchange states that counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (i) members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) major broker-dealers.[14] Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as "cover" for Financial Investments, as described above, or to earn interest.

The Trust will adopt certain fundamental policies consistent with the 1940 Act and each Fund will be classified as "non-diversified" under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" ("RIC") for purposes of the Internal Revenue Code (the "Code"), in order to relieve the Trust and the Funds of any liability for Federal income tax to the extent that its earnings are distributed to shareholders.[15]

Availability of Information About the Shares and Underlying Indexes

The Trust's or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (c) its Prospectus and Product Description; and (d) other quantitative information such as daily trading volume. The Prospectus and/or Product Description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.[16]

The Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (the "IIV") (as defined and discussed below under "Dissemination of Indicative Intra-Day Value (IIV)"), recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit. The Exchange will make available on its Web site daily trading volume, closing price, the NAV and final dividend amounts to be paid for each Fund.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.profunds.com* or another relevant Web site as determined by the Trust) and/or the Exchange (*http://www.amex.com*). The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the "IIV File" (described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File provided to Authorized Participants. The format of the public Web site disclosure and the IIV File will differ because the public Web site will list all portfolio holdings while the IIV File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation

net settlement system of the NSCC or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.

[13] CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of the term "commodity pool operator" upon the filing of a notice of eligibility with the National Futures Association.

[14] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on May 10, 2006 (as to insertion of term "major" in describing broker-dealer counterparties).

[15] In order for a fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or simular trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies).

[16] *See* "Prospectus Delivery" below regarding the Product Description. The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Furthermore, any sales material will reference the availability of such circular and the prospectus.

Unit.[17] Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust Web site at *http://www.profunds.com*, or another relevant Web site as determined by the Trust, and/or at the Exchange's Web site at *http://www.amex.com*.

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099–DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, *e.g.*, *http://www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in initial aggregations of at least 50,000 ("Creation Units"). Purchasers of Creation Units will be able to separate the Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Funds is expected to be in the range of $50–$250.

Because the NSCC's system for the receipt and dissemination to its participants of a Portfolio Composition File ("PCF") is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of Financial Instruments.[18] The IIV File will contain, for each Fund, information sufficient for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.

For example, the following information would be provided in the IIV File for a Fund holding swaps and futures contracts: (A) The notional value of the swaps held by such Fund (together with an indication of the index on which such swap is based and whether the Fund's position is long or short), (B) the most recent valuation of the swaps held by the Fund, (C) the notional value of any futures contracts (together with an indication of the index on which such contract is based, whether the Fund's position is long or short and the contact's expiration date), (D) the number of futures contracts held by the Fund (together with an indication of the index on which such contract is based, whether the Fund's position is long or short and the contact's expiration date), (E) the most recent valuation of the futures contracts held by the Fund, (F) the Fund's total assets and total shares outstanding, and (G) a "net other assets" figure reflecting expenses and income of the Fund to be accrued during and through the following business day and accumulated gains or losses on the Fund's Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that any Bearish Fund holds cash or cash equivalents, information regarding such Fund's cash and cash equivalent positions will be disclosed in the IIV File for such Fund.

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for the Funds during such next business day. The IIV File will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Funds will be created and redeemed entirely for cash. The IIV File published before the opening of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit Aggregation, and the amount of cash that will be paid upon redemption of a Creation Unit Aggregation, for each Fund for that business day.

As noted below in "Dissemination of Indicative Intra-Day Value (IIV)," the Exchange will disseminate through the facilities of the CTA, at regular 15 second intervals during the Exchange's regular trading hours, the IIV on a per Fund Share basis.[19]

Creation and Redemption of the Funds.

The Funds will be purchased and redeemed entirely for cash ("All-Cash Payments"). The use of an All-Cash Payment for the purchase and redemption of Creation Unit Aggregations of the Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.[20]

Placement of Creation Unit Aggregation Purchase and Redemption Orders

Creation Unit Aggregations of the Funds will be purchased and redeemed only for cash at NAV plus a transaction

[17] The composition will be used to calculate the NAV later that day.

[18] The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all Authorized Participants who are also NSCC participants and the Exchange will have access to the password and the Web site containing the IIV File. However, the Fund will disclose to the public identical information, but in a format appropriate to public investors, at the same time the Fund discloses the IIV and PCF files to industry participants.

[19] The Funds will not be involved in, or responsible for, the calculation or dissemination of any such amount and will make no warranty as to its accuracy.

[20] In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because Applicants believe it makes little difference to an arbitrageur whether Creation Unit Aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a Deposit Basket. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the Financial Instruments.

fee. The purchaser will make a cash payment by 12 p.m. ET on the third business day following the date on which the request was made (T+3). Purchasers of the Funds in Creation Unit Aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the Participation Agreement between the Trust and Authorized Participants.

Creation Unit Aggregations of the Funds will be redeemable for an All-Cash Payment equal to the NAV, less the transaction fee.

Dividends

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a pro rata basis, to Beneficial Owners of such Shares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Dividend Reinvestment Service") available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service, and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of Shares. Brokerage commissions charges and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally will be an expense borne by the individual beneficial owners participating in reinvestment through such service.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of the CTA: (i) Continuously throughout the trading day, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or "IIV" [21] as calculated by a third party calculator (the "IIV Calculator").[22] Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate an IIV for each Fund in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by the Amex is expected to be close to the most recently calculated Fund NAV on a per share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation for the Funds

The IIV Calculator will disseminate the IIV throughout the trading day for the Funds. The IIV Calculator will determine such IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust), (ii) calculating the mark-to-market gains or losses from futures, options and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions, (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. It is anticipated that a minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The Exchange represents the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the ProShares.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding shares in all Funds of the Trust listed on the Exchange.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Amex Rule 950—ANTE (f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.[23]

[21] The IIV is also referred to by other issuers as an "Estimated NAV," "Underlying Trading Value," "Indicative Optimized Portfolio Value (IOPV)," and "Intraday Value" in various places such as the prospectus and marketing materials for different exchange-traded funds.

[22] The Exchange will calculate the IIV for each Fund.

[23] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

Amex Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations, regarding the application of Commentary .03 to Amex Rule 1000A to the Funds. The Circular will further inform members and member organizations of the prospectus and/or Product Description delivery requirements that apply to the Funds. The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the Application.

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (*See* Amex Rule 918C). In the case of the Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member; and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in each Fund's prospectus and SAI, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Hours of Trading/Minimum Price Variation

The Funds will trade on the Amex until 4:15 p.m. ET each business day. Shares will trade with a minimum price variation of $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [24] in general and furthers the objectives of Section 6(b)(5) [25] 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 transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change, as amended, will impose no 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 by the Exchange on this proposal, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–41 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–Amex–2006–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–41 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7471 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53781; File No. SR–CHX–2006–12]

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits.

May 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Participant Fee Schedule (the "Fee Schedule") to reduce the assignment fees charged to specialist firms seeking the right to trade securities to $500 per assignment, when the securities are assigned in competition with other firms. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

Under the Exchange's rules, the Committee on Specialist Assignment and Evaluation is responsible for appointing participant firms to act as specialists on the Exchange.[3] When more than one firm competes for the right to be the specialist in a particular security, the Exchange charges assignment fees of $1,000 or $4,000 for the assignment, depending on the number of firms competing for that right.[4]

In a separate filing, the Exchange has submitted a proposal to implement a new trading model, which features an automated Matching System into which orders may be sent for execution, but which does not involve the use of specialists to handle customer orders.[5] Instead, in this new model, off-Exchange market makers may choose to handle customer orders, by sending those orders to the Exchange or to other venues for execution. Because the Exchange plans to be able to implement its new model in the second quarter of 2006, the Exchange believes that the right to trade securities as an Exchange specialist has only a short-term benefit. For that reason, the Exchange proposes to reduce the assignment fees to $500 per security, regardless of the number of participants competing for the assignments and regardless of the type of security that is being assigned.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[3] *See* Article IV, Rule 6.

[4] For "dual trading system" securities, a group of securities which includes securities listed on the New York Stock Exchange or American Stock Exchange, the Exchange currently charges a $1,000 assignment fee if the security (or a group of securities) was assigned in competition with at least one other participant and up to one-third of all participants that trade these issues. The fee for the assignment of this type of security is increased to $4,000 if the security (or a group of securities) was assigned in competition with more than one-third of the participants that trade these issues. For Nasdaq/NM securities, the Exchange currently charges a $1,000 assignment fee if the security was assigned in competition with one other participant firm; the fee is increased to $4,000 if two or more firms compete for the assignment.

[5] *See* SR–CHX–2006–05.

[6] The Exchange believes that it is appropriate to maintain at least a $500 assignment fee to help defray the costs of the assignment process. The Exchange will continue to charge no fee when securities are assigned without competition. The Exchange is submitting a separate filing, SR–CHX–2006–13, which proposes to make this fee reduction effective retroactively to March 1, 2006.

Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and creates an appropriate (and limited) incentive for a firm to agree to act as specialist on a temporary basis.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CHX–2006–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2006–12. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2006–12 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7470 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53788; File No. SR–ISE–2006–19]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to PrecISE Fees

May 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On May 10, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt fees for the use of its new, proprietary PrecISE Trade® order entry terminals. The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, 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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish fees for the use of ISE's new, proprietary PrecISE Trade order entry terminals. PrecISE Trade is

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[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the purpose section of the filing to clarify that: (i) PrecISE is merely a new front-end system interface to the Exchange's existing trading system, which does not require changes to ISE's surveillance or communications rules and does not impact the Exchange's market structure; (ii) ISE members will continue to pay CLICK fees only to the extent that they continue to have or use those terminals; (iii) the new away market routing functionality is optional for members; and (iv) the $20 monthly fee charged to IRDs for the away market routing functionality will be charged per PrecISE trade terminal (which conformed the purpose section to the text of the Schedule of Fees).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

the brand name of ISE's front-end order-entry terminal that, ultimately, will replace ISE's current front-end CLICK® order-entry terminal licensed to it by OMX Technology that Electronic Access Members ("EAMs") use to send orders to the ISE and view market data.[6] The Exchange currently charges EAMs $500 per CLICK terminal, for the first terminal through the fifth terminal. For the sixth terminal and all subsequent terminals, the Exchange charges EAMs $250 per CLICK terminal. However, all CLICK fees for the second and all subsequent terminals are waived through June 30, 2006.[7] The Exchange proposes monthly PrecISE Trade terminal fees of $250 per terminal, with a $500 minimum and $1500 maximum, per EAM, per month. These new PrecISE Trade fees will enable the ISE to recoup the costs of developing, maintaining, and supporting the PrecISE Trade terminals. To allow members to become familiar with the PrecISE Trade terminals, the Exchange proposes to waive the associated fees for a member's first two months of PrecISE Trade terminal usage. Members that currently have CLICK terminals will continue to pay fees for those terminals during this period to the extent they continue to have or use those terminals. The Exchange believes this will allow for a smooth transition to the new PrecISE Trade terminals.

Additionally, PrecISE Trade terminals will have away market routing functionality, enabling members to send option orders to other option exchanges through the PrecISE Trade terminal, if a member so desires.[8] To accomplish "away-market routing," an EAM must establish a relationship with an Intermediate Routing Destination ("IRD"). An IRD is an ISE member that has connectivity to, and is a member of, other options exchanges. If an EAM sends an order to an IRD using the away market routing functionality of a PrecISE Trade terminal, the IRD will route that order to the designated away market on behalf of the entering EAM. The Exchange proposes to charge IRDs a flat monthly fee of $20 per PrecISE Trade terminal that is authorized to send orders to that IRD if a member requests the away-market routing functionality. This fee will enable the ISE to recoup the costs of developing, maintaining, and supporting the away-market routing functionality.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act[9] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, these fees would permit the Exchange to recover the costs of developing, maintaining, and supporting PrecISE Trade terminals and away-market routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–19 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–ISE–2006–19. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[6] After the introduction of PrecISE Trade terminals, the ISE will begin phasing out CLICK terminals. Upon the completion of such phase-out, ISE will submit a proposed rule change to the Commission pursuant to which it will remove CLICK fees from its fee schedule. The Exchange represents that a PrecISE Trade terminal is merely a new front-end system interface to the existing trading system operated by the Exchange known as CLICK (i.e., it is a new means of connecting to the Exchange's existing trading system), and does not require any changes to the Exchange's surveillance or communications rules. Further, there is no change to, or impact on, the Exchange's market structure as a result of the new PrecISE Trade terminals.

[7] *See* Securities Exchange Act Release No. 51775 (June 2, 2005), 70 FR 33569 (June 8, 2005).

[8] The away market routing functionality is an added feature of the new PrecISE Trade terminal. This functionality is offered as a convenience to ISE members and is not an exclusive means to send orders intermarket.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] The effective date of the original proposed rule is April 3, 2006. The effective date of Amendment No. 1 is May 10, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 10, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Number SR–ISE–2006–19 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7465 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53787; File No. SR–NASD–2006–053]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Establish Additional Routing Options in the INET System for Securities Listed on the New York Stock Exchange or the American Stock Exchange

May 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2006, the National Association of Securities Dealers, Inc., through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by Nasdaq. On May 5, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[4] thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq revised the proposed rule text to specify that the Nasdaq-specified time period under the proposed DOT Alternative 2 routing option would not exceed 30 seconds and added a representation to the purpose section regarding communicating changes to the Nasdaq-specified time period to INET users promptly.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish two additional routing options in its INET System for orders in securities listed on the New York Stock Exchange LLC ("NYSE") or the American Stock Exchange LLC ("AMEX").

The text of the proposed rule change is below. Proposed new language is *underlined;* proposed deletions are in [brackets].[6]

4956. Routing

(a) INET Order Routing Process.

(1) The INET Order Routing Process shall be available to Participants from 7 a.m. to 8 p.m. Eastern Time, and shall route orders as described below:

(A) Exchange-Listed Routing Options.

The System provides [six] *eight* routing options for orders in exchange-listed securities. Of these [six] *eight*, [only three] *five*—DOT Immediate, DOT Alternative, *DOT Alternative 2, Reactive Only DOT* and DOT Nasdaq—are available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The [six] *eight* System routing options for NYSE and/or Amex listed orders are:

(i) DOT Immediate ("DOTI")—under this option, after checking the INET System for available shares, orders are sent directly to the NYSE or the AMEX as appropriate. When checking the INET book, the System will seek to execute at the better price of either the limit price specified in the order, or the best price displayed at that time at the NYSE. If no liquidity is available in the INET System, the order will be routed directly to the NYSE or AMEX at the limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this option.

(ii) DOT Alternative ("DOTA")—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution before the destination exchange. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this strategy.

(iii) DOT Alternative 2 ("DOTA2")—under this option, orders first check the INET book and then other market centers for potential execution. Any portion of the order that remains unexecuted is posted on the INET book until the expiration of the Nasdaq-specified time period at either the order's limit price or, if the limit price would lock or cross the market, at the highest bid or lowest offer that would not lock the market. At the expiration of the period specified by Nasdaq (which will not exceed 30 seconds), any remaining unexecuted portion of the order is sent to the NYSE or AMEX, as appropriate (the destination exchange). DOTA2 orders entered prior to the destination exchange's opening time will be displayed on the INET book until immediately prior to the opening time and then sent to the destination exchange. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

(iv) Reactive Only DOT ("DOTR")—under this option, orders first check the INET book and then other market centers and the destination exchanges (the NYSE or the AMEX, as appropriate) for potential execution. Any portion of the order that remains unexecuted is posted on the INET book (unless they were sent to the destination exchange). Subsequently, if an order that was posted on the INET book became locked or crossed by another accessible market center or destination exchange, the System will route the order to the locking or crossing market center or destination exchange. Whenever an order is sent to the destination exchange, it is sent at its original price for potential display and/or execution. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

[(iii)] *(v)* Reactive Electronic Only ("STGY")—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. With the exception

[6] Changes are marked to the rule text that appears in the electronic NASD Manual that can be found at *http://www.nasd.com.*

of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(iv)] (*vi*) Electronic Only Scan ("SCAN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(v)] (*vii*) Aggressive Electronic Only ("SPDY")—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. Market orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a *de minimis* exception to the trade-through rule set forth in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(vi)] (*viii*) DOT Nasdaq ("DOTN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the Nasdaq Market Center and/or Nasdaq's Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

(B) and (C) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Users of Nasdaq's INET System are currently able to select (subject to their best execution obligations to their own customers, if applicable) from among six different routing options for orders in securities listed on the NYSE or the AMEX. Some of the existing user choices instruct INET to route such orders to the NYSE or the AMEX, while others instruct INET to route to a subset of market centers.

Nasdaq is proposing to give INET System users two additional options for how and when INET should route their orders to the NYSE or the AMEX (the "destination exchanges"). Under the proposed DOT Alternative 2 option, the INET System first checks the INET book and then other market centers (but not the destination exchanges) for potential executions. Any portion of the order that remains unexecuted is then posted on the INET book at the order's limit price. (If the limit price would lock or cross the market, the order is posted at the highest price for buy orders or lowest price for sell orders that would not lock or cross the market.) At the posted order's expiration time, any portion that still remains unexecuted is sent to the NYSE or the AMEX for display or execution at the original limit price. The length of time from the posting of an order to its expiration will be set by Nasdaq for all orders that select the DOT Alternative 2 option. The expiration time is currently set at three seconds from the time of order posting, but in response to INET System users' preferences, Nasdaq may adjust it from time to time in the future. Nasdaq represents that it will promptly communicate to INET System users any adjustments it makes to the length of this time period.

The proposed Reactive Only DOT order is similar to the Reactive Electronic Only order, but it also includes the manual NYSE and AMEX markets in its initial routing. Under the Reactive Only DOT option, the INET System first checks the INET book and then other market centers and the destination exchanges (the NYSE and the AMEX) for potential executions. Any portion of the order that remains unexecuted is posted on the INET book. (Of course, any portion of the order that during the checking process had appeared marketable at the destination exchange and was sent there, but then failed to execute, would be displayed at that exchange and not in the INET book.) If any accessible market center or destination exchange subsequently locks or crosses the order, INET will route it to the locking/crossing market center or exchange. If an order is sent to the destination exchange but fails to execute completely, the unexecuted portion will be displayed by that exchange and will not return to INET for display purposes. Nasdaq notes that the new choices will give users of the INET System added flexibility when handling orders for NYSE- and AMEX-listed securities. Nasdaq believes that such flexibility will undoubtedly help users as they seek to achieve best execution of orders. The proposal does not remove or change any of the INET System's existing functions, and its users will remain free not to take advantage of the new choices that are being made available to them.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section

[7] 15 U.S.C. 78*o*–3.

15A(b)(6) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, Nasdaq notes that the proposal offers users of the INET System additional flexibility in selecting the most appropriate routing strategy for their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has designated the foregoing rule change, as amended, as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay for the proposed rule change, as amended, is consistent with the protection of investors and the public interest because the proposal would give INET System users two, additional options for routing their orders and, therefore, should be implemented without delay. 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 the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–053 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7462 Filed 5–16–06; 8:45 am]

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[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[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).

[12] The effective date of the original proposed rule change is April 21, 2006 and the effective date of Amendment No. 1 is May 5, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 5, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53791; File No. SR–NYSE–2006–33]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pilot Program Beginning on May 12, 2006 and Ending on October 31, 2006 or Sooner, To Implement Certain Hybrid Market Changes and Amend Certain Changes to Approved Hybrid Market Rules

May 11, 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 10, 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. The Exchange 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 proposed rule change 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 proposed rule change consists of amendments to NYSE rules governing trading in pilot securities ("Pilot

[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).

Securities") pursuant to a pilot program (the "Pilot").

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. 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 NYSE HYBRID MARKET SM was proposed in SR–NYSE–2004–05 and Amendment Nos. 1, 2, 3, 5, 6, 7, and 8 [5] thereto and approved on March 22, 2006 [6] ("Hybrid Market filings" or "Hybrid"). The Hybrid Market filings, as approved, set forth the Exchange's plan to provide mechanisms for more electronic trading via NYSE Direct+® ("Direct+"), while retaining the benefits of the auction market. Phase 1 of the Hybrid Market is in the process of being implemented Floor-wide. Other Hybrid Market changes will be implemented in several phases over the next few months.

As a result of a merger between Lucent Technologies Inc. ("Lucent") and Alcatel, announced on or about March 23, 2006, there has been increased activity in Lucent, a listed security on the Exchange. Much of this activity has been routed to other market centers that have automatic execution facilities with no size and frequency restrictions.[7] In order to remain competitive with other market centers in Lucent, the Exchange proposes a Pilot that would implement immediately certain of the Hybrid Market changes approved but scheduled for implementation in later phases. In addition, the Exchange proposes certain amendments, as outlined below, to other approved rules for the purposes of the Pilot.

This Pilot would include only Lucent. The Exchange may seek to include other securities in the Pilot for similar reasons. In the event the Exchange seeks to do so, the Exchange will amend the Pilot by filing a proposed rule change with the Commission indicating the proposed additions and notify its membership of such additions, if approved.

The Pilot would commence on May 12, 2006, and would terminate on October 31, 2006 or earlier, upon notice to the Commission and Exchange membership. An Information Memo would be issued and posted on the Exchange's Web site announcing the Pilot.

Moreover, the Exchange intends to have available at all times during the Pilot two versions of the operating settings—the new version that would be operational and the original, pre-Pilot version. If a problem develops during the Pilot, the Exchange will be able to revert to the pre-Pilot settings within an average time of two minutes or less.

In the event systems or other problems arise with the Pilot that adversely impact investors or impede the Exchange's ability to maintain a fair and orderly market, the Exchange will immediately terminate the Pilot in whole or in part, as appropriate, and return trading to operations under NYSE rules applicable at the time of such termination.

Rules Applicable to the Pilot

The following rules are applicable during the Pilot. The Exchange has designated these rules with a "P" in the proposed rule text.[8] In addition, during the Pilot, all other Exchange rules will apply as they do to other securities traded on the Exchange.[9] Furthermore, functions and rules to be implemented in future phases of Hybrid, as described in the Hybrid Market filings and approval order, will apply to the Pilot when implemented in the normal course of business. For this reason, the Exchange has kept the numbering of these Pilot rules consistent with and parallel to the Hybrid Market approved rules, except for the addition of the "P" designation. Where the Pilot rules are different from the Hybrid Market rules, the Pilot rules shall govern with respect to the Pilot securities.

Definition of Auto Ex Order (Rule 13(P))

In the Hybrid Market filings, the Exchange defined an auto ex order in Rule 13, in part, as "a market order designated for automatic execution or a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book.®" In addition, the Commission approved the Exchange's proposal to eliminate the 1,099 share restriction for auto ex orders. Although the Hybrid Market filings have been approved, this change has not yet been implemented.

For purposes of this Pilot, the Exchange proposes to:

(i) Provide that auto ex orders in Pilot securities may be entered as market and limit orders in an amount greater than 1,099 shares;

(ii) Add a maximum order size of 3 million shares for auto ex orders; [10] and

(iii) Include that all market orders,[11] not only those market orders specifically designated as such, are eligible for automatic execution.[12]

The Exchange believes that in the case of highly liquid securities, such as Lucent, this proposed change will benefit customers entering market orders, allowing them the opportunity to get a better and faster execution rather than requiring them to wait for a manual execution by a specialist.

Where an incoming auto ex market order that exhausts all liquidity at the best bid (offer) remains unfilled, the specialist will manually handle the

[5] *See* Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005). The Exchange withdrew Amendment No. 4 and replaced it with Amendment No. 5. *See also* Amendment No. 6 filed on September 16, 2005, Amendment No. 7 filed on October 11, 2005, and Amendment No. 8 filed on March 14, 2006.

[6] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) ("Hybrid Market approval order").

[7] *See* Exchange Rules 1000 and 1005, as in effect today.

[8] The previous Hybrid Market pilot which put into operation Phase 1 of the Exchange's Hybrid Market initiative also designated rules with a "P." This pilot terminated upon Commission approval of the Hybrid Market. Roll out of Phase 1 Floor-wide to all Exchange-listed securities began March 24, 2006. *See also* Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005); *see also* Information Memos 05–98 (December 14, 2005) and 06–14 (March 23, 2006).

[9] Phase 1 was implemented in Lucent on April 5, 2006.

[10] This would allow the Exchange to provide for a phased-in raising of order size eligibility, up to a maximum of 3,000,000 shares. Each raising of order size eligibility shall be preceded by advance notice to the Exchange's membership. The Exchange intends to begin the Pilot with a maximum order size of 1,000,000 shares, which is the same as NYSE Archipelago's ("Arca") automatic execution facility's maximum order size.

[11] In the Hybrid Market filings, market orders need to be designated auto ex in order to be treated so. The Exchange recognizes that a separate 19b-4 filing is required in order for this provision to be applicable beyond the Pilot.

[12] *See* proposed Exchange Rule 13(a)(i)(P) and (a)(P).

remainder of the market order.[13] Where an auto ex limit order or residual thereof cannot be immediately executed, it shall be displayed as a limit order on the Display Book.® [14]

As stated above, as other parts of Rule 13 amended by the Hybrid Market filings are implemented in the normal course of business, the Exchange proposes that they will apply to the Pilot.

Definition of a Market Order—Rule 13(P)

The Hybrid Market filings provided that "a market order designated for automatic execution is an auto ex order and shall be executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004." For purposes of the Pilot, and as described above, this definition is proposed to be amended to state that all market orders are auto ex orders, even if they are not designated for automatic execution.

NYSE Direct+—Automatic Executions—Rules 1000(P) and 1005.10(P)

The Exchange proposes to add Rule 1000.10(P) which describes the unique rules applicable to the Pilot and the Pilot's start and end dates.

In the Hybrid Market filings, the Exchange deleted the first three sentences of Exchange Rule 1000 and added (a) as a paragraph designation. The Exchange proposes to implement these amendments for purposes of the Pilot. In addition, the Exchange added language to reflect that automatic executions may take place with respect to reserve interest, orders on the Display Book outside the Exchange published quotation during sweeps and with floor broker agency file interest and specialist interest. The Exchange is not proposing to implement this change to Rule 1000 at this time. Accordingly, automatic executions will continue to be executed against only displayed interest.[15]

In addition, the Exchange proposes to implement Exchange Rule 1000(d) to set forth how auto ex market and limit orders would be handled during the Pilot; auto ex orders would trade with all liquidity at the best bid (offer). Where there is residual, it shall trade with available contra-side interest.[16] In addition, as noted above, where an incoming auto ex market order that exhausts all liquidity at the best bid (offer) remains unfilled, the specialist will manually handle the remainder of the market order.[17]

Finally, the Exchange is not seeking to implement as part of the Pilot at this time the amendments to Hybrid Market Rules 1000(a)(i)–(vi). The current NYSE Direct+ rules will continue to govern when automatic executions are not available. As noted above, the approved amendments to these rules will be implemented in a later phase. Should the Pilot still be active at the time of their implementation, the amended Hybrid Market version of these rules will apply to the Pilot, upon notice to the Exchange membership.

In the Hybrid Market filings, the Exchange proposed to rescind Rule 1005. This amendment has been approved by the Commission, but has not yet been implemented. Exchange Rule 1005 provides that "an auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock," unless certain conditions are met. The Exchange proposes to implement this rescission with respect to the Pilot.[18]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act [21] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the Pilot may enhance competition in this highly liquid security by allowing NYSE to modify its automatic execution system for this security.[25] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[26]

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

[13] *See* proposed Exchange Rule 1000(d)(v)(A)(P).
[14] *See* proposed Exchange Rule 1000(d)(v)(P).
[15] *See* proposed Exchange Rule 1000(a)(P).
[16] *See* proposed Exchange Rules 1000(d)(i)–(ii)(P).
[17] *See* proposed Exchange Rule 1000(d)(v)(A)(P).
[18] *See* proposed Exchange Rule 1005.10(P).
[19] 15 U.S.C. 78f(b).
[20] 15 U.S.C. 78f(b)(5).
[21] 15 U.S.C. 78k–1(a)(1).
[22] 15 U.S.C. 78s(b)(3)(A).
[23] 17 CFR 240.19b–4(f)(6).
[24] 17 CFR 240.19b–4(f)(6)(iii).
[25] The Exchange represented that it would not implement the specialist algorithmic function in the Pilot until the Exchange develops guidance to clarify how it expects specialists to comply with NYSE Rule 104. Telephone conversation between Nancy Reich, Vice President, NYSE, and Kelly M. Riley, Assistant Director, Division of Market Regulation, Commission, on May 10, 2006. *See also* footnote 382 of the Hybrid Market approval order, *supra* note 6.
[26] 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. 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–33 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–2006–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–33 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7459 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53789; File No. SR–NYSE–2006–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Interpretation of NYSE Rule 345 (Employees—Registration, Approval, Records)

May 11, 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 February 17, 2006, the New York Stock Exchange, Inc.[3] (n/k/a New York Stock Exchange LLC) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On May 3, 2006, NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is filing with the SEC a proposed amendment to Interpretation (a)/02 ("Independent Contractors") of NYSE Rule 345 ("Employees—Registration, Approval, Records"). The proposed rule change would reduce the filing requirements in connection with the establishment of an "independent contractor" relationship between a natural person, who is required to be registered pursuant to NYSE Rule 345, and a member organization.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the principal office of the Exchange, 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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) *Background.* Over the years, registered persons and member organizations have on occasion entered into arrangements wherein the registered person is designated an "independent contractor" of the member organization. Such arrangements are often pursued due to tax planning considerations on the part of the individual and/or cost saving considerations on the part of the organization. Specifically, persons asserting independent contractor status may be eligible for certain tax benefits, especially with respect to retirement planning. On the other hand, some member organizations have structured their business model so that certain overhead costs (*e.g.*, office rent, secretarial services, etc.) are borne by the registered representative in the context of an independent contractor arrangement.

NYSE Rule 345(a) requires that natural persons performing certain prescribed duties on behalf of a member organization be registered with and qualified by the Exchange.[5] The Interpretation of NYSE Rule 345(a)[6] permits a registered representative to assert the status of "independent contractor" provided that any registered representative associated with a member organization who is so designated be

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange is now known as the New York Stock Exchange LLC. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

[4] *See* Amendment No. 1.

[5] NYSE Rule 345(a) states that "[n]o * * * member organization shall permit any natural person to perform regularly the duties customarily performed by (i) a registered representative, (ii) a securities lending representative, (iii) a securities trader or (iv) a direct supervisor of (i), (ii) or (iii) above, unless such person shall have been registered with, qualified by and is acceptable to the Exchange."

[6] *See NYSE Interpretation Handbook*, Rule 345(a)/02.

considered an employee of that member organization for purposes of the rules of the Exchange.

Currently, the Interpretation subjects all such independent contractor arrangements to prior Exchange approval pursuant to the submission of written representations which the Interpretation categorizes into four sections. First, the Interpretation requires a representation from the member organization that it will supervise and control all activities of the independent contractor effected on its behalf to the same degree and extent that it regulates the activities of all other registered representatives and in a manner consistent with NYSE Rule 342. Second, it requires that a copy of the written agreement between the independent contractor and the member organization be submitted to the Exchange and that such agreement provides that the independent contractor will engage in securities-related activities solely on behalf of the member organization (except as otherwise explicitly may by permitted by the member organization in writing); that such securities-related activities will be subject to the direct, detailed supervision, control and discipline of the member organization; and that such person is not subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Act.[7] Third, the Interpretation requires the prospective independent contractor to submit an undertaking subjecting him or herself to the jurisdiction of the Exchange. And fourth, it requires the member organization to provide to the Exchange assurances that the prospective independent contractor is covered by the organization's fidelity insurance and that compliance has been had with applicable state Blue Sky provisions.

The proposed amendments would eliminate the requirement to submit these representations to the Exchange, as the regulatory purposes they serve (*e.g.*, to provide notice to the Exchange of independent contractor arrangements; to ensure that member organizations are aware of their responsibility to supervise independent contractors; and to ensure that the Exchange is able to assert jurisdiction over such persons in the event of a violation of Exchange and/or Federal securities laws) can now be more efficiently accomplished in light of recent regulatory developments.

Specifically, the Exchange branch office[8] and Form U4[9] applications are now processed through the Central Registration Depository ("CRD") System. Unlike previous versions, the revised version of Form U4 requires registration applicants to disclose if they maintain an independent contractor relationship with the member organization that will be carrying the registration. This disclosure provides notice to the Exchange of all independent contractor relationships between registered persons and member organizations, thereby obviating the need to submit duplicative notice.

Further, by executing Form U4, the independent contractor signatory agrees to abide by the rules of any self-regulatory organization ("SRO"), including the Exchange, to which their member organization is subject, thereby establishing the jurisdictional reach formerly provided by the above-noted written representation to the Exchange. Specifically, the revised version of Form U4 requires registered persons who seek to become associated with a member organization to "submit to the authority of the jurisdictions and SROs and agree to comply with all provisions, conditions and covenants of the statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the jurisdictions and SROs as they are or may be adopted, or amended from time to time."[10]

(b) *Proposed Amendments.* The Exchange strongly believes that there be no ambiguity as to the regulatory expectations with respect to independent contractor arrangements involving member organizations. Thus, while the Interpretation has been rewritten to eliminate the requirement that such arrangements be submitted to the Exchange for approval, the intent and substance of the Interpretation has been retained.

As noted above, recent changes to Form U4 now require the identification by registered persons of independent contractor status, thus providing to the Exchange prompt notice and an up-to-date record of such persons.[11] Given this recently established procedural control, it is proposed that the Interpretation of NYSE Rule 345(a) be amended to eliminate the requirement that member organizations submit separate written representations to the Exchange for approval of proposed independent contractor arrangements. The amended Interpretation would, however, retain current requirements with respect to regulatory expectations regarding such arrangements.

The proposed amendments to the Interpretation would prescriptively retain language, which is currently required to be included in member organizations' requests for approval of each independent contractor arrangement, that would unambiguously confirm that the claim of independent contractor status by a person does not compromise such person's characterization and treatment as an employee of their associated member organization firm for purposes of the rules of the Exchange.[12]

[7] *See* 15 U.S.C. 78a *et seq.*

[8] Exchange branch office applications are processed via Form BR. *See* Securities Exchange Act Release No. 52543 (September 30, 2005); 70 FR 58771 (October 7, 2005) (File No. SR–NYSE–2005–13). *See also* NYSE Information Memo No. 05–75 dated October 6, 2005.

[9] Uniform Application for Securities Industry Registration or Transfer. Form U4 includes information such as an individual's ten-year employment history, five-year residential history, education, disciplinary actions, disclosure information, and the self-regulatory organization of registration.

[10] See Form U4, Subsection 2 of Section 15A (Individual/Applicant's Acknowledgement and Consent).

[11] NYSE Rule 345.12 provides, in part, that an application for a natural person required to be registered with the Exchange shall be submitted on Form U4 and that information on Form U4 must be kept current and shall be updated by filing with the Exchange an amendment to that filing.

[12] This is consistent with the Commission's long-standing view that independent contractors (who are not themselves registered as broker-dealers) involved in the sale of securities on behalf of a broker-dealer are "controlled by" the broker-dealer and, therefore, are associated persons of the broker-dealer for all purposes of the Act. See Securities Exchange Act Release No. 44992 (dated October 26, 2001), Footnote 18. While a firm may accept independent contractor status for purposes other than the federal securities laws, such treatment does not alter such person's status as a person associated with a broker or dealer or the firm's responsibility to supervise under the federal securities laws. Further, the Commission does not recognize the concept of "independent contractors" for purposes of the Act, even if such arrangement with an associated person satisfies the criteria for "independent contractor" status for other purposes. See, *e.g., In the Matter of Raymond James, Inc.* (Initial Decision Release No. 296, Administrative Proceeding File No. 3–11692, September 15, 2005). ("...independent contractor status not relevant to whether independent contractor was acting within the apparent scope of his authority...the Commission does not recognize the concept of independent contractor for purposes of the Exchange Act"); In *the Matter of William V. Giordano,* (Securities Exchange Act Release No. 36742, January 19, 1996) (in finding that an officer of a broker-dealer firm failed reasonably to supervise such independent contractor, the Commission treated an independent contractor as an "associated person" of the firm within the meaning of Section 3(a)(18) of the Act). In its decision, the Commission noted that while a firm may accept independent contractor status for purposes other than the federal securities laws, such treatment does not alter such person's status as a person associated with a broker or dealer or the firm's responsibility to supervise under the federal securities laws. It also noted that the "Commission does not recognize the concept of 'independent contractors' for purposes of the Exchange Act, even

Further, while the proposed amendments make clear that independent contractors are fully subject to the same regulatory scheme as registered employees of member organizations, it is proposed that the regulatory attestations currently required to be included in member organization approval requests be prescriptively retained; the purpose being to highlight those aspects of the regulatory scheme that have historically given rise to dispute in connection with independent contractor arrangements. Accordingly, the proposed amendments would continue to specifically require compliance with the following regulatory requirements:

(1) The member organization must directly supervise and control all activities effected on its behalf by independent contractors to the same degree and extent that it is required to regulate the activities of all other persons registered with such member organization consistent with NYSE Rule 342 and all other applicable Exchange rules. (This would explicitly confirm that the standard of supervision for registered independent contractors is identical to that of registered employees, since the supervisory requirements of NYSE Rule 342 apply to member organizations and their employees.)

(2) The member organization must ensure that independent contractors are covered by the organization's fidelity insurance bond; [13] determine whether such persons are subject to a "statutory disqualification" (independent contractor status does not avoid full compliance with statutory disqualification regulations; the independent contractor would be expected to be fingerprinted and subject to a background check in the same manner as any employee); and ensure that independent contractors are in compliance with applicable state Blue Sky provisions.

(3) The member organization must ensure that any permitted dual employment arrangement involving an independent contractor be in compliance with NYSE Rule 346 ("Limitations–Employment and Association with Members and Member Organizations").

(4) The member organization must ensure that the initiation and cessation of independent contractor status and other required amendments be appropriately and timely evidenced via Form U4 or U5,[14] as applicable. It is expected that independent contractor status will be indicated on Form U4 at the time of initial registration. If such status is discontinued, either by termination of the relationship or by the independent contractor becoming an employee, prompt amendment of Form U4 would be required.

Further, the proposed amendments would require member organizations to obtain the written attestation of each individual seeking to assert independent contractor status that he or she will be subject to the direct supervision, control and discipline of the member organization, and will be bound by the relevant rules, standards and guidelines of the member organization. Each prospective independent contractor would also be required to attest in writing that he or she will be deemed an employee of the member organization and, as such, will be fully subject to the jurisdiction of the Exchange. The purpose behind requiring this written concurrence is to better assure that prospective independent contractors are fully aware of the regulatory arrangement they are entering into. The proposed amendments retain an updated [15] version of a "Consent to Jurisdiction" form that would be required for this purpose. Though submittal of executed forms to the Exchange for approval would no longer be required, member organizations would be required to retain them along with the corresponding independent contractor agreement and would be required to timely provide them to the Exchange upon request.

The current Interpretation limits the application of independent contractor status to persons without supervisory responsibilities.[16] The proposed amendments would remove the prohibition against supervisory persons asserting the status of independent contractor, except for those persons designated as principal executive officers (*e.g.*, Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, etc.) who must remain direct employees of the member organization given their unique senior principal executive responsibilities over the various areas of their associated member organization.[17]

Permitting supervisors to assert independent contractor status would not affect the individual's ability to supervise, nor would it reduce accountability for failure to fulfill their supervisory, regulatory, and other professional obligations. Regardless of whether an individual is deemed an independent contractor, he or she will be required to have the same qualifications and act in the same capacity as any other person similarly charged with supervisory responsibilities. Given these safeguards, and the broad range of activities currently characterized as "supervisory," the restriction on supervisory persons becoming independent contractors would seem to serve no practical nor regulatory purpose. The proposed elimination of the restriction will serve to increase the range of choices available to supervisory persons without detracting from the standards to which they are held.

In sum, the Exchange believes that the proposal will reduce unnecessary administrative burdens on member organizations, while still fully subjecting persons who choose to assert independent contractor status to member organizations' internal policies and procedures, and the jurisdictional reach of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) [18] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest. The proposed amendments are consistent with that section in that they permit firms to structure their employment relationships with registered persons in a manner consistent with Exchange rules and without any diminution of

if such arrangement with an associated person satisfies the criteria for 'independent contractor' status for other purposes." *See Hollinger* v. *Titan Capital Corp.*, 914 F.2d 1564, 1572–76 (9th Cir. 1990) (broker-dealer is a "controlling person" under Act with respect to its registered representative, even if broker dealer and registered representative contractually agree that representative would be an independent contractor, and thus, broker-dealers were required to supervise their representatives).

[13] These regulations are consistent with the Commission's Division of Market Regulation 1982 letter restating its policy toward independent contractors. In the 1982 letter, the Division stated that independent contractor salesperson whose activities are subject to control by a broker-dealer must be registered with a self-regulatory organization and should be covered by the employer broker-dealer's fidelity bond. *See* Letter from Douglas Scarff, Director, Division of Market Regulation, to Gordon S. Macklin, NASD, Charles J. Henry, Chicago Board Options Exchange, Robert J. Birnbaum, American Stock Exchange, and John J. Phelan, NYSE.

[14] Uniform Termination Notice for Securities Industry Registration.

[15] The amendments to "Consent to Jurisdiction" consist of the deletion of dated references (such as the "Constitution" of the Exchange); replacing the term "registered representative" with the term "registered person" to reflect the proposed amendment, discussed below, that would eliminate the prohibition against supervisory persons asserting independent contractor status; and non-substantive changes that improve it stylistically.

[16] That prohibition has been relaxed as to registered representatives "in charge" of an office under NYSE Rule 342.15. *See* Securities Exchange Act Release No. 48762 (November 7, 2003), 68 FR 64942 (November 17, 2003) (SR–NYSE–2003–26).

[17] 17 See NYSE Rule 311(b)(5) and its Interpretation.

[18] 15 U.S.C. 78f(b)(5).

Exchange jurisdiction and oversight with respect to their activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–05 and should be submitted on or before June 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53790; File No. SR–Phlx–2006–04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 2 Thereto Relating to Dissemination of Index Values

May 11, 2006.

I. Introduction

On January 12, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to license the current and closing index values underlying the Exchange's proprietary options to its wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"), and to allow PBOT to collect subscriber fees from market data vendors. The Phlx filed Amendment No. 1 to the proposed rule change on March 23, 2006 and submitted notification of withdrawal of Amendment No. 1 on March 24, 2006. On March 24, 2006, the Phlx filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 7, 2006.[3] The Commission received no comments regarding the proposal.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Dissemination of Index Values

The Phlx proposes to license the current and closing index values underlying most of the Phlx's proprietary indexes including the following options to PBOT for the purpose of selling, reproducing, and distributing the index values over PBOT's Market Data Distribution Network ("MDDN")[5]: the Phlx Gold/Silver Sector SM ("XAU SM"), Phlx Oil Service Sector SM ("OSX SM"), Phlx Semiconductor Sector ("SOX SM"), and the Phlx Utility Sector SM ("UTY SM") (together, the "Approved Index Options"). The Exchange proposes that the index values underlying the Approved Index Options no longer be disseminated as described in their respective Rule 19b–4 filings and approval orders.[6]

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53584 (March 31, 2006), 71 FR 17938.

[4] Although the Commission received no written comments on the proposed rule change, the Exchange did receive one comment opposing the Exchange's underlying decision to remove index values from the consolidated tape and disseminate them through PBOT. See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005. The Exchange believes that the continued listing and trading of the Approved Index Options, the relocation of Phlx proprietary index values from the consolidated tape to PBOT, and the fees to be assessed by PBOT after underlying index values are removed from the consolidated tape are appropriate and consistent with the Act so long as the index values continue to be widely disseminated by one or more market data vendors.

[5] Additional information regarding the PBOT MDDN can be found on the Exchange's Web site at *http://www.phlx.com/pbot/Market_Data/mktdata.html*.

Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Phlx represents that those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. Phlx further represents that PBOT has, however, secured a similar license from one other index provider, and Phlx anticipates that PBOT will enter into similar license agreements with proprietors of other indexes underlying options traded on the Phlx.

[6] *See* Securities Exchange Act Release Nos. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (XAU); 38207 (January 27, 1997), 62 FR 5268 (February 4, 1997) (OSX); 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SOX); 24889 (September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY). In the proposed rule changes filed by

The Exchange proposes to cease disseminating the current and closing index values of certain of its proprietary indexes [7] over the facilities of the Consolidated Tape Association ("CTA"). The Exchange states that it has entered into a license agreement with PBOT pursuant to which PBOT will disseminate such values solely over the PBOT's MDDN.[8] The Exchange or its third party designee will objectively calculate and make available to PBOT every 15 seconds real time current and closing index values on each trading day. The three industry leading market data vendors would make the real time market data widely available to subscribers, as would several mid-tier vendors.[9]

B. Subscriber Fees

The Exchange also proposes to allow PBOT to charge subscriber fees to vendors of market data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN. The subscriber fees are set out in agreements that PBOT would execute and has executed with various market data vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.[10] Phlx proposes that all vendors will be charged, based upon usage by their subscribers, a monthly fee of $1.00 per "Device," as defined in the agreement,[11] that is used by vendors and their subscribers to receive and re-transmit Phlx proprietary sector index current and settlement values on a real time basis and disseminated every 15 seconds. This monthly fee would be reduced by 15% for those vendors which provide market data to 200,000 or more Devices in any month ("15 Percent Administrative Fee Deduction"). For snapshot data, which is essentially market data that is refreshed no more frequently than once every 60 seconds, Phlx proposes that vendors will be charged $.00025 per request or $1,500 per month for unlimited snapshot data requests.[12]

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [13] and, in particular, the requirements of section 6 of the Act.[14] Specifically, as discussed in detail below, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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. In addition, the Commission believes that the proposal is consistent with section 6(b)(4) of the Act,[16] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described below. The subscriber fees are also consistent with Rule 603 under the Act.[17]

A. Dissemination of Index Values

The Commission believes that the Exchange's proposal to disseminate the index values of its proprietary index options through PBOT is consistent with the Commission's requirement that the index values underlying exchange traded options and other products be frequently and widely disseminated.[18] The Exchange has represented that under its proposal current index values for the Phlx proprietary indexes would be widely disseminated by one or more major market data vendors at least every 15 seconds during Exchange trading hours and that closing index values would be promptly disseminated.[19]

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the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission's approval orders also described the index value dissemination procedures in some cases.

[7] Phlx's proprietary indexes are, in addition to the indexes underlying the Approved Index Options, the Phlx Defense Sector SM, Phlx Drug Sector SM, Phlx Europe Sector SM, Phlx Housing Sector SM, and the Phlx World Energy Index SM, all of which were listed pursuant to Phlx Rule 1009A(b), the Exchange's generic index option listing standard rule. Phlx's proprietary indexes are owned and maintained by Phlx. The Exchange represents that it has determined not to remove the Phlx World Energy Index SM ("XWE" SM) and the Phlx Europe Sector SM ("XEX" SM) from CTA immediately but proposes to move these index values to the PBOT MDDN at a future date.

[8] The MDDN is a new internet protocol multicast network developed by PBOT and SAVVIS Communications. The Exchange states that its licensing agreement grants PBOT the exclusive, royalty-free, worldwide right to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Exchange's proprietary indices. Phlx represents that the license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices. Phlx also states that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN, and not over CTA Tape B.

[9] The term "vendors" as used herein includes subvendors which receive the market data feed from vendors rather than directly from PBOT, but which execute the same agreement with PBOT that vendors execute and pay the same subscriber fees.

[10] The Exchange represents that approximately 25 vendors, including for example Bloomberg L.P., Telekurs Financial Information Ltd. and Thomson Financial, have already entered into such market data agreements with PBOT. At least three of the vendors have elected to offer only the continuous real-time market data and will not offer snapshot or delayed data. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

[11] The definition of "Device" in the agreement is complex and incorporates a number of other defined terms. The agreement provides that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. For the avoidance of doubt, a Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data.

By way of further explanation, an "End User" is an individual authorized or allowed by a vendor or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data. For example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of $10,000. A vendor which makes available unlimited snapshot data to its customers would be assessed a monthly fee of $1500.00 regardless of the number of End Users or Devices involved.

[12] The index values may also be made available by vendors on a delayed basis (*i.e.*, no sooner than twenty minutes following receipt of the data by vendors) at no charge. The Exchange also notes that Devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(4).

[17] 17 CFR 242.603.

[18] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at 70960; 52572 (October 7, 2005), 70 FR 60125 (October 14, 2005) (SR–Phlx–2005–57) (amending the listing standards for Trust Shares and Index Fund Shares to provide that the current value of the underlying index must be widely disseminated by one or more market data vendors every 15 seconds); and 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR–NASD–2005–024) (revising the listing standards for Portfolio Depository Receipts and Index Fund Shares to provide that the current value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR–Amex–2005–044).

[19] This is consistent with Phlx Rule 1100A(a), which provides that "[t]he Exchange shall

Continued

The Commission notes that, apart from changing the mechanism by which index values are disseminated, the Exchange represents that it will continue to maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b–4 filings and approval orders. Thus, the Commission believes the proposal will continue to provide investors with the pricing information necessary for the orderly trading of options and derivative securities based on these indexes.

B. Subscriber Fees

The Exchange represents that the fees to be charged by PBOT are consistent with the requirements of Rule 603 under the Act in that the fees are fair and reasonable and not unreasonably discriminatory.[20] The Commission believes that PBOT's proposed fee structure is reasonable as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data.[21]

With regard to the 15 percent Administrative Fee Deduction proposed by the Exchange, the Commission does not believe it to be unreasonably discriminatory. As proposed by the Exchange, vendors which provide market data to 200,000 or more Devices in any given month would receive a credit against the fees charged and collected by PBOT pursuant to the vendor agreement. Any vendor that meets the 200,000 Device standard will qualify for and receive the 15 Percent Administrative Fee Deduction. The Exchange represents that PBOT is offering the 15 Percent Administrative Fee Deduction as an incentive for large market data vendors to carry the data disseminated by the PBOT network. The Commission recognizes that volume-based discounts of fees are not uncommon, and where the discount can be applied objectively, it is consistent with Rule 603. For the same reasons noted above, the Commission believes that the fee structure meets the standard in section 6(b)(4) of the Act[22] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2006–04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7464 Filed 5–16–06; 8:45 am]

BILLING CODE 8010–01–P

disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange." Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Rule 19b–4(e) under the Act are also reported at least once every 15 seconds during the time the index options are traded on the Exchange pursuant to Phlx Rule 1009A(b)(10).

[20] 17 CFR 242.603 (Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks). The Exchange represents that the Vendor/Subvendor Agreements between PBOT and the market data vendors provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes. The Commission notes that any such fee changes would need to be submitted to the Commission under section 19(b) of the Act.

[21] The Exchange represents that it does not presently realize any revenue from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants. Currently, market data vendors pay a $200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10464 and #10465]

Tennessee Disaster # TN–00009

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 05/09/2006.

Incident: Severe Storms.

Incident Period: 04/25/2006.

Effective Date: 05/09/2006.

Physical Loan Application Deadline Date: 07/10/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gibson.

Contiguous Counties: Tennessee: Carroll; Crockett; Dyer; Madison; Obion; Weakley.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875.
Homeowners Without Credit Available Elsewhere	2.937.
Businesses With Credit Available Elsewhere	7.763.
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000.
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 10464 B and for economic injury is 104650. The State which received an EIDL Declaration # is Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Hector V. Barreto,

Administrator.

[FR Doc. E6–7460 Filed 5–16–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection package that may be included in this notice is for a new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations

regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the address and fax number listed below:

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

SSA Survey of Ticket to Work Beneficiaries—0960–NEW. The Social Security Administration (SSA) plans to survey two groups of Social Security beneficiaries who qualified for the Ticket to Work program. The first group consists of those beneficiaries who did choose to enter the program, while those in the second group did not. The information gathered by the survey will be used to assess and contrast the social and media interaction preferences of these beneficiaries. SSA will use the information to develop a communications plan to inform beneficiaries who have not yet entered the program, and persons who might influence their decision, of the benefits that can be derived from this program. Of specific interest are which media (print, radio formats, TV/cable programming, etc.) will have the greatest impact on the target populations. The respondents are Social Security beneficiaries who qualified for the Ticket to Work program.

Type of Request: New information collection.

Number of Respondents: 800.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 200 hours.

Dated: May 11, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–7472 Filed 5–16–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5409]

Culturally Significant Objects Imported for Exhibition Determinations: "Searching for Shakespeare"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Searching for Shakespeare," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about June 23, 2006, until on or about September 17, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 2, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–7507 Filed 5–16–06; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Public Hearing to Hear Presentations From Certain Distributors of TVA Power and Other Invited Speakers on the Subject of Transmission Access

AGENCY: Tennessee Valley Authority.

ACTION: Notice of public hearing.

SUMMARY: The TVA Board of Directors will hold a public hearing on the subject of transmission access to hear presentations from distributors of TVA power and other invited speakers.

DATES: Thursday, May 18, 2006, 10 a.m. CDT.

ADDRESSES: Hopkinsville-Christian County Conference and Convention Center, Hopkinsville, Kentucky. Anyone who wishes to provide written comments for inclusion in the Hearing record may send their comments by May 25, 2006, to: TVA Board of Directors, Transmission Access Hearing Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Public Law 108–447, div. C, tit. VI, 118 Stat. 2965.

Dated: May 11, 2006.

Maureen H. Dunn,

Executive Vice President and General Counsel.

[FR Doc. 06–4597 Filed 5–16–06; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Wednesday,
May 17, 2006

Part II

The President

Federal Register
Vol. 71, No. 95
Wednesday, May 17, 2006

Presidential Documents

Title 3—

The President

Proclamation 8016 of May 12, 2006

National Defense Transportation Day and National Transportation Week, 2006

By the President of the United States of America

A Proclamation

On National Defense Transportation Day and during National Transportation Week, we thank all those who contribute to a sound transportation infrastructure that keeps our country moving, advances our economic growth, and strengthens our national defense.

President Dwight D. Eisenhower recognized the importance of having the world's most efficient and reliable transportation system. In a message to the Congress, he wrote of "a vast system of inter-connected highways criss-crossing the Country and joining at our national borders with friendly neighbors to the north and south." Fifty years after he signed the Federal-Aid Highway Act of 1956, the Interstate Highway System is a vital part of America's transportation infrastructure.

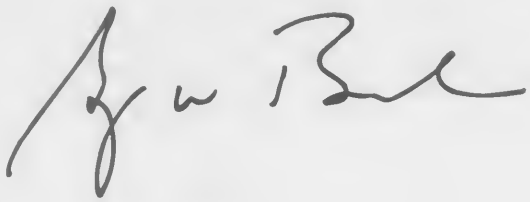
My Administration remains committed to providing the American people with the best possible transportation system. In August 2005, I signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, to upgrade our Nation's network of roads, bridges, and mass transit systems, introduce new safety standards, and fund needed road improvements that will ease traffic congestion in communities across our country. My Administration is also increasing research in advanced transportation technologies that will improve our environment, help us end our reliance on foreign sources of energy, and strengthen our economic and national security.

Modern transportation also enables our Armed Forces to quickly deploy troops, move crucial supplies and equipment, and assist with emergency situations. Whether on land, over water, or in the air, our citizens rely on the safety and efficiency of our transportation systems to arrive at work, deliver goods and services, and travel with family and friends. America is grateful to the dedicated transportation professionals and military service members for their tireless efforts to make America's transportation network the best in the world.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well being and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), declared that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 19, 2006, as National Defense Transportation Day and May 14 through May 20, 2006, as National Transportation Week. I encourage all Americans to learn how our modern transportation system contributes to the security of our citizens and the prosperity of our country and to celebrate these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 06–4664
Filed 5–16–06; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8017 of May 12, 2006

National Safe Boating Week, 2006

By the President of the United States of America

A Proclamation

By providing an opportunity to experience our Nation's scenic waterways, recreational boating is one of our country's most popular activities. During National Safe Boating Week, we underscore the importance of taking safety precautions before going out on the water and encourage all Americans to make responsible decisions while boating.

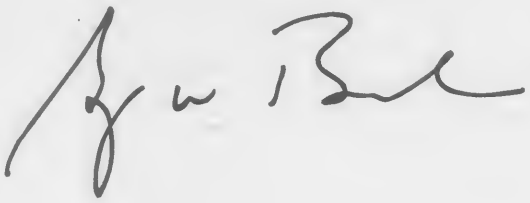
This year marks the 35th anniversary of the enactment of the Federal Boat Safety Act, which has helped reduce the number of recreational boating deaths in our country. Yet despite significant progress, recreational boating accidents still occur and, tragically, the majority of them are preventable. Operator inattention and inexperience, careless and reckless navigation, and excessive speed are the leading contributing factors of all reported accidents. An estimated 70 percent of reported boating fatalities in 2004 occurred on boats where the operator had not received safety instruction, and of those victims who drowned, nearly 90 percent were not wearing life jackets.

America's boat owners and operators play a large role in helping ensure passenger safety. The United States Coast Guard initiative "You're in Command" serves to educate boaters about how to enjoy our Nation's waters safely and responsibly. For more information about being safe while on the water, boaters can visit uscgboating.org and safeboatingcampaign.com. By taking simple precautions such as wearing a life jacket, taking a boating safety course, getting a Vessel Safety Check, and never boating under the influence of alcohol or drugs, we can continue to save lives and reduce the number of accidents and injuries that occur each year.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as "National Safe Boating Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 20 through May 26, 2006, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to join in observing this week. I also urge all Americans to learn more about safe boating practices and always engage in proper and responsible conduct while on the water.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 06–4665
Filed 5–16–06; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8018 of May 12, 2006

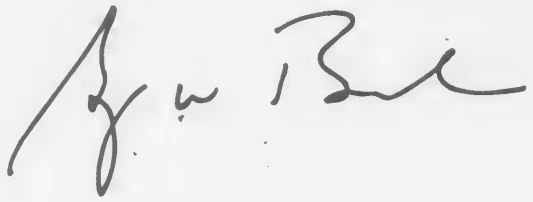
Death of G. V. Sonny Montgomery

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of G. V. Sonny Montgomery, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 06–4666
Filed 5–16–06; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
May 17, 2006

Part III

The President

Federal Register
Vol. 71, No. 95
Wednesday, May 17, 2006

Presidential Documents

Title 3—

The President

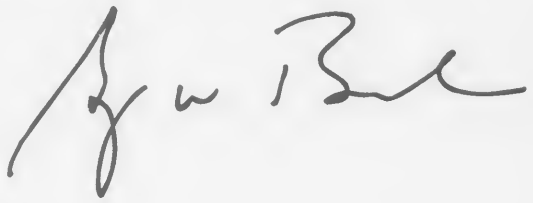
Memorandum of May 5, 2006

Assignment of Functions Relating to Import Restrictions on Iraqi Antiquities

Memorandum for the Secretary of State and the Secretary of Homeland Security

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the functions of the President under section 3002 of the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III of Public Law 108–429) are assigned to the Secretary of State. In the performance of such functions, the Secretary of State shall consult the Secretary of Homeland Security and the heads of other departments and agencies, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington May 5, 2006.

[FR Doc. 06–4658
Filed 5–16–06; 10:06 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of May 5, 2006

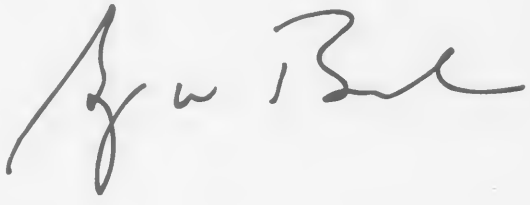
Certain Programs To Build the Capacity of Foreign Military Forces and Related Reporting Requirements

Memorandum for the Secretary of State, the Secretary of Defense, and the Director of the Office of Management and Budget

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code and section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163), I direct the Secretary of Defense to conduct or support, within available appropriations, programs that comply with section 1206 for the following countries: Algeria, the Bahamas, Cameroon, Chad, Dominican Republic, Equatorial Guinea, Gabon, Indonesia, Jamaica, Lebanon, Morocco, Nigeria, Pakistan, Panama, Sao Tome and Principe, Senegal, Sri Lanka, Thailand, Tunisia, and Yemen.

The function of the President under subsection (f) of section 1206 is assigned to the Secretary of State. In performing such function, the Secretary of State should consult with the Secretary of Defense and the Director of the Office of Management and Budget.

The Secretary of State is authorized and directed to transmit, on my behalf, a copy of this memorandum to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington May 5, 2006.

[FR Doc. 06–4659
Filed 5–16–06; 10:06 am]
Billing code 4710–10–P

Presidential Documents

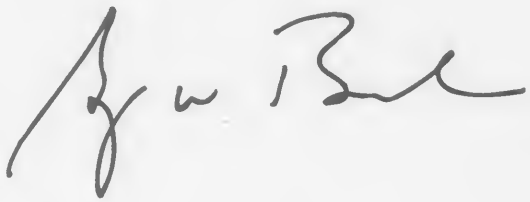
Memorandum of May 8, 2006

Assignment of Function Concerning Assistance to Afghanistan

Memorandum for the Secretary of State, the Director of the Office of National Drug Control Policy, and the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the function of the President under the heading "Economic Support Fund" in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102) that relates to waiver of a proviso is assigned to the Secretary of State. The Director of the Office of National Drug Control Policy and the Director of National Intelligence shall, consistent with applicable law, provide the Secretary of State with such information as may be necessary to assist the Secretary in the performance of such function.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington May 8, 2006.

[FR Doc. 06–4660
Filed 5–16–06; 10:06 am]
Billing code 4710–10–P

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LIST OF PUBLIC LAWS

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H.R. 3351/P.L. 109–221

Native American Technical Corrections Act of 2006 (May 12, 2006; 120 Stat. 336)

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