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Presidential Documents

Title 3—

The President

Proclamation 8048 of September 8, 2006

National Historically Black Colleges and Universities Week, 2006

By the President of the United States of America

A Proclamation

Education is the cornerstone of a prosperous and hopeful Nation. By providing a quality education, Historically Black Colleges and Universities (HBCUs) help students achieve their dreams and realize the promise of America. During National Historically Black Colleges and Universities Week, we recognize the significant contributions of HBCUs and underscore our commitment to helping these distinguished institutions in the pursuit of educational excellence.

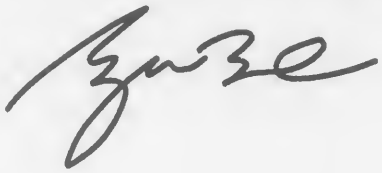
Our Nation's Historically Black Colleges and Universities are places of higher learning and achievement that prepare new generations of Americans to become responsible leaders in their communities and around the world. HBCUs enable students to gain the skills necessary to compete for the jobs of the 21st century.

My Administration is dedicated to ensuring the continued success of HBCUs and securing the constitutional guarantees of liberty and equality to all Americans. The President's Board of Advisors on Historically Black Colleges and Universities has worked to help these institutions benefit from Federal programs, obtain private-sector support for their endowments, and build partnerships to strengthen faculty development and cooperative research. In addition, the HBCU Capital Financing Program provides HBCUs with access to funds for the repair, renovation, and construction of educational resources and facilities.

During National Historically Black Colleges and Universities Week, we celebrate the enduring importance of HBCUs, and resolve to continue to support their critical mission.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 10 through September 16, 2006, as National Historically Black Colleges and Universities Week. I call upon public officials, educators, librarians, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities in recognition of the vital contributions of HBCUs.

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



[FR Doc. E6–15292
Filed 9–12–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2005–0116]

Mediterranean Fruit Fly; Remove Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, From the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from these portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, and that the quarantine and restrictions are no longer necessary. These portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, were the last remaining areas in California quarantined for Mediterranean fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Mediterranean fruit fly.

DATES: This interim rule was effective September 7, 2006. We will consider all comments that we receive on or before November 13, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS–2005–0116 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–2005–0116, 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–2005–0116.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of numerous fruits and vegetables. The Medfly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on February 7, 2006, and published in the **Federal Register** on February 13, 2006 (71 FR 7393–7395, Docket No. APHIS–2005–0116), we quarantined portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, and restricted the interstate movement of regulated articles from the quarantined areas.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that Medfly has been eradicated from the quarantined portions of these counties. The last finding of Medfly in the Los Angeles and San Bernardino Counties, CA, quarantined areas was December 13, 2005, and the last finding of Medfly in the Santa Clara County, CA, quarantined area was October 9, 2005.

Since then, no evidence of Medfly infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that Medfly no longer exists in Los Angeles, San Bernardino, and Santa Clara Counties, CA. Therefore, we are removing the counties from the list of quarantined areas in § 301.78–3(c). With the removal of Los Angeles, San Bernardino, and Santa Clara Counties, CA, from that list, there are no longer any areas in the continental United States quarantined for Medfly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, were quarantined due to the possibility that the Medfly could be spread from those areas to noninfested areas of the United States. Since we have concluded that Medfly no longer exists in those areas, immediate action is warranted to remove the quarantine on Los Angeles, San Bernardino, and

Santa Clara Counties, CA, and to relieve the restrictions on the interstate movement of regulated articles from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This action amends the Medfly regulations by removing Los Angeles, San Bernardino, and Santa Clara Counties, CA, from the list of quarantined areas.

County records indicated there are approximately 297 small entities that may be affected by the lifting of the quarantine in this interim rule. These include 127 yard maintenance firms, 110 fruit sellers, 22 nurseries, 15 growers, 4 distributors, 4 haulers, 3 certified farmers' market, 3 processors, 2 harvesters, 2 packers, 2 recyclers, 1 food bank, 1 producer, and 1 swapmeet. These 297 entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, had little effect on the small entities in the area, the lifting of the quarantine in the current interim rule will also have little effect.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Mediterranean fruit fly.

Done in Washington, DC, this 7th day of September 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–15213 Filed 9–12–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 736

[Docket No. 060818222–6222–01]

RIN 0694–AD83

Amendment to General Order No. 3: Addition of Certain Entities; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Wednesday, September 6, 2006 (71 FR 52426) that amended a general order published on June 5, 2006 in the **Federal Register** to add nine additional entities related to Mayrow General Trading. The September 6, 2006, final rule contained an error in the amendatory language for paragraph (a)(1). This document corrects that error by revising that paragraph of the general order.

DATES: *Effective Date:* This rule is effective September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Michael D. Turner, Director, Office of Export Enforcement, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Phone: (202) 482–1208, x3; E-mail: *rpd2@bis.doc.gov*; Fax: (202) 482–0964.

SUPPLEMENTARY INFORMATION:

Background

This document corrects an inadvertent error in the final rule that was published by the Bureau of Industry and Security (BIS) on September 6, 2006 (71 FR 52426). In the September 6, 2006, final rule, the amendatory instruction for General Order No. 3 to Supplement No. 1 to part 736, paragraph (a)(1) did not specify that the entire paragraph (a)(1) was being revised. This document corrects General Order No. 3 to Supplement No. 1 to part 736, by revising paragraph (a)(1).

Consistent with section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (2000) (the "Act"), a foreign policy report was submitted to Congress on August 29, 2006, notifying Congress of

the imposition of a control in the form of a licensing requirement for exports and reexports of all items subject to the EAR destined to the nine additional entities related to Mayrow General Trading that were added to General Order No. 3 with the September 6, 2006, final rule.

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 most recently by the Notice of August 3, 2006 (71 FR 44551 (August 7, 2006)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, e-mail: *publiccomments@bis.doc.gov*.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)) Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 736

Exports, Foreign trade.

■ Accordingly, part 736 of the Export Administration Regulations (15 CFR part 736) is corrected by making the following correcting amendment:

PART 736—[CORRECTED]

■ 1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Public Law 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. General Order 3 to Supplement No. 1 to part 736, paragraph (a)(1) is correctly revised to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(a) *License requirements.* (1) Effective June 5, 2006, a license is required to export or reexport any item subject to the EAR to Mayrow General Trading or entities related, as follows: Micatic General Trading; Majidco Micro Electronics; Atlinx Electronics; Micro Middle East Electronics; Narinco; Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi; and H. Ghasir. Mayrow General Trading and all entities related described in paragraph (a)(1) are located in Dubai, United Arab Emirates. This license requirement applies with respect to any transaction in which any of the above-named entities will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items.

* * * * *

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. E6–15135 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–002]

Standardization of Small Generator Interconnection Agreements and Procedures

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on clarification; correction.

SUMMARY: This document corrects an error in an Order on Clarification that the Federal Energy Regulatory Commission published in the **Federal Register** on July 27, 2006. The Order on Clarification erroneously omitted text from two sections within the appendices of the document.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission at (202) 502–8532.

SUPPLEMENTARY INFORMATION: In FR Document E6–11989, published July 27, 2006 (71 FR 42587) make the following correction to appendices 2 and 3 of the document:

Appendix 2: Revised System Impact Study Agreement and Appendix 3: Revised Facilities Study Agreement [Corrected]

On page 42591, column 2, section "21.0 *Reservation of Rights* and on page 42592, column 3, section "19.0 *Reservation of Rights*, the language is corrected to read as follows for both of these sections:

"*Reservation of Rights:* The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 of any other applicable provision of the Federal Energy Power Act and FERC rules and regulations thereunder, and the Interconnection Customer shall have

the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the parties otherwise agree as provided herein."

Magalie R. Salas,

Secretary.

[FR Doc. E6–15126 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for use of an approved Type A medicated article containing chlortetracycline to formulate a free-choice loose mineral Type C medicated feed for beef and nonlactating dairy cattle.

DATES: This rule is effective September 13, 2006.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *eric.dubbin@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., Fort Lee, NJ 07024, filed NADA 48–761 for use of AUREOMYCIN 90 Granular (chlortetracycline) Type A medicated article to formulate a free-choice loose mineral Type C medicated feed for beef and nonlactating dairy cattle as an aid in the control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline. The supplemental NADA is approved as of July 28, 2006, and the regulations are amended in 21 CFR 558.128 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.128, redesignate paragraph (e)(6) as paragraph (e)(7); and add new paragraph (e)(6) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(6) It is used as a free-choice, loose mineral Type C feed as follows:

(i) *Specifications.*

Ingredient	Percent	International Feed No.
Dicalcium Phosphate	46.20	6–26–335
Sodium Chloride (Salt)	15.00	6–04–152
Magnesium Oxide	10.67	6–02–756
Cottonseed Meal	10.00	5–01–625
Trace Mineral/Vitamin Premix[1]	3.80	
Calcium Carbonate	3.50	6–01–069
Dried Cane Molasses	3.00	4–04–695
Potassium Chloride	2.00	6–03–755
Mineral Oil	2.00	8–03–123
Iron Oxide	0.50	6–02–431
Chlortetracycline Type A medicated article (90 gram/lb)	3.33	

[1]Content of vitamin and trace mineral premixes may be varied. However, they should be comparable to those used for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. Selenium must comply with 21 CFR 573.920. Ethylenediamine dihydroiodide (EDDI) should comply with FDA Compliance Policy Guides Sec. 651.100 (CPG 7125.18).

(ii) *Amount.* 6,000 grams per ton.

(iii) *Indications for use.* Beef and nonlactating dairy cattle: As an aid in the control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline.

(iv) *Limitations.* Feed continuously on a free-choice basis at a rate of 0.5 to 2.0 mg chlortetracycline per head per day.

(v) *Sponsor.* See No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: August 30, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–15103 Filed 9–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9277]

RIN 1545–BE30

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9277) that were published in the **Federal**

Register on Monday, July 31, 2006 (71 FR 43056) providing guidance regarding employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G.

DATES: These corrections are effective July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Mireille T. Khoury, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 4980G of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9277) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 54 is corrected by making the following correcting amendments:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read, in part, as follows:

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

■ **Par. 2.** Section 54.4980G–0 is corrected by:

■ 1. Revising the entries for 54.4980G–4 Q–5 and Q–11.

■ 2. Revising the entries for 54.4980G–5 Q–3.

§ 54.4980G–0 Table of contents.

* * * * *

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

Q–5: Must an employer use the same contribution method as described in Q & A–2 and Q & A–4 of this section for all employees for any month during the calendar year?

* * * * *

Q–11: If an employer makes additional contributions to the HSAs of all comparable participating employees who are eligible to make the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

* * * * *

§ 54.4980G–5 HSA comparability rules and cafeteria plans and waiver of excise tax.

* * * * *

Q–3: If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA and the employees have the right to elect to make pre-tax salary reduction contributions to their HSAs, are the contributions subject to the comparability rules?

* * * * *

■ **Par. 3.** Section 54.4980G–4 is corrected by:

■ 1. Revising A–2 paragraph (c) *Example 2.*

■ 2. Revising A–2 paragraph (e) *Example 1.*

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

A–2: * * *

(c) * * *

Example 2. In a calendar year, Employer J offers its employees an HDHP and contributes on a monthly pay-as-you-go basis to the HSAs of employees who are eligible individuals with coverage under Employer J's HDHP. In the calendar year, Employer J contributes $50 per month to the HSA of each employee with self-only HDHP coverage and $100 per month to the HSA of each employee with family HDHP coverage. From January 1st through March 31st of the calendar year, Employee X is an eligible individual with self-only HDHP coverage. From April 1st through December 31st of the calendar year, X is an eligible individual with family HDHP coverage. For the months of January, February and March of the calendar year, Employer J contributes $50 per month to X's HSA. For the remaining months of the calendar year, Employer J contributes $100 per month to X's HSA. Employer J's contributions to X's HSA satisfy the comparibility rules.

(d) * * *

(e) * * *

Example 1. In a calendar year, Employer K offers its employees an HDHP and contributes on a look-back basis to the HSAs of employees who are eligible individuals with coverage under Employer K's HDHP. Employer K contributes $600 ($50 per month) for the calendar year to the HSA of each employee with self-only HDHP coverage and $1,200 ($100 per month) for the calendar year to the HSA of each employee with family HDHP coverage. From January 1st through June 30th of the calendar year, Employee Y is an eligible individual with family HDHP coverage. From July 1st through December 31st, Y is an eligible individual with self-only HDHP coverage. Employer K contributes $900 on a look-back basis for the calendar year to Y's HSA ($100) per month for the months of January through June and $50 per month for the months of July through December. Employer K's contributions to Y's HSA satisfy the comparability rules.

* * * * *

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–15125 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9287]

RIN 1545–BE53

Attained Age of the Insured Under Section 7702

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations explaining how to determine the attained age of an insured for purposes of testing whether a contract qualifies as a life insurance contract for Federal income tax purposes.

DATES: *Effective Date:* These regulations are effective September 13, 2006.

Applicability Dates: For dates of applicability, see § 1.7702–2(f).

FOR FURTHER INFORMATION CONTACT: Ann H. Logan, 202–622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 7702(a) of the Internal Revenue Code (Code) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either (1) Satisfy the cash value accumulation test of section 7702(b), or (2) both meet the guideline premium requirements of section 7702(c) and fall within the cash value corridor of section 7702(d). To determine whether a contract satisfies the cash value accumulation test, or meets the guideline premium requirements and falls within the cash value corridor, it is necessary to determine the attained age of the insured.

A contract meets the cash value accumulation test of section 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single

premium that would have to be paid at that time to fund future benefits under the contract. Under section 7702(e)(1)(B), the maturity date of the contract is deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100, for purposes of applying the cash value accumulation test.

A contract meets the guideline premium requirements of section 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the greater of the guideline single premium or the sum of the guideline level premiums as of such time. The guideline single premium is the premium that is needed at the time the policy is issued to fund the future benefits under the contract based on the following three elements enumerated in section 7702(c)(3)(B):

(i) Reasonable mortality charges that meet the requirements (if any) prescribed in regulations and that (except as provided in regulations) do not exceed the mortality charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued;

(ii) Any reasonable charges (other than mortality charges) that (on the basis of the company's experience, if any, with respect to similar contracts) are reasonably expected to be actually paid; and

(iii) Interest at the greater of an annual effective rate of six percent or the rate or rates guaranteed on issuance of the contract.

The guideline level premium is the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium but using a minimum interest rate of four percent, rather than six percent. Like the cash value accumulation test, the guideline premium requirements are applied by deeming the maturity date of the contract to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100. The deemed maturity date generally is the determination date set forth in the contract or the end of the mortality table (which, when section 7702 was enacted in 1984, was age 100).

A contract falls within the cash value corridor if the death benefit of the contract at any time is not less than the applicable percentage of the cash surrender value. The applicable percentage is determined based on the attained age of the insured as of the beginning of the contract year, as follows:

APPLICABLE PERCENTAGE

In the case of an insured with an attained age as of the beginning of the contract year of:		The applicable percentage shall decrease by a ratable portion for each full year:	
More than:	But not more than:	From:	To:
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100

The Code does not define the attained age of the insured for purposes of applying the cash value corridor, the guideline premium limitations, or the computational rules of section 7702(e). The Senate Finance Committee explanation of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), however, states that the attained age of the insured means the insured's age determined by reference to contract anniversaries (rather than the individual's actual birthdays), so long as the age assumed under the contract is within 12 months of the actual age. See S. Prt. No. 98–169, Vol. 1, at 576 (1984).

Section 7702A defines a modified endowment contract (MEC) as a contract that meets the requirements of section 7702 (that is, a contract that is a life insurance contract), but that fails to meet the 7-pay test set forth in section 7702A(b). A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have been paid on or before that time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums. Section 7702A(c)(1)(B) provides that, for purposes of this test, the computational rules of section 7702(e) generally apply, including the contract's deemed maturity no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100.

In sum, the attained age of an insured under a contract that is a life insurance contract under the applicable law must be determined to test whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and (by reason of the computational rules of section 7702(e)) the cash value accumulation test of section 7702(b) and the 7-pay test of section 7702A(b), as applicable.

On May 24, 2005, the IRS and Treasury Department published a notice of proposed rulemaking (REG–168892–03), (2005–25 I.R.B. 1293, June 20, 2005) in the **Federal Register** (70 FR 29671) (the proposed regulations). The proposed regulations provide guidance on how to determine the attained age of an individual insured under a contract that is a life insurance contract under the applicable law, for purposes of testing whether the contract qualifies as a life insurance contract under section 7702 and is a modified endowment contract under section 7702A. Under the proposed regulations, the attained age of the insured is either (i) The insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age) or (ii) the insured's age determined by reference to contract anniversary (rather than the individual's actual birthday),

so long as the age assumed under the contract (contract age) is within 12 months of the actual age. The proposed regulations provide that the attained age of the insured under a contract insuring multiple lives on a last-to-die basis is the attained age of the youngest insured, and the attained age of the insured under a contract insuring multiple lives on a first-to-die basis is the attained age of the oldest insured.

The sole party requesting a public hearing timely withdrew its request. One written comment regarding the notice of proposed rulemaking was received.

Explanation of Provisions

After consideration of the written comment received, this Treasury decision adopts the regulations as proposed, with the modifications noted below.

A. Identity of the Insured Individual

The proposed regulations provide that, in the case of a last-to-die contract, the attained age of the insured means the age of the youngest individual insured under the contract. The comment letter pointed out that, in the case of such a contract, the death of the youngest insured raises a question whether the attained age under the contract should continue to be determined based on the attained age of the deceased insured, or should instead be based on the attained age of the youngest *surviving* insured. Some last-to-die life insurance contracts undergo a change in both cash value and future mortality charges as a result of the death of an insured. These changes take into account the identity of the surviving insured or insureds. Other last-to-die life insurance contracts treat the death of an insured as a non-event for purposes of measuring cash value and future mortality charges under the contract. The comment letter suggested a rule for last-to-die contracts that would take into account the age of the youngest surviving insured if the contract undergoes modifications to both the cash value and future mortality charges under the contract, so that the attained age assumptions used for Federal income tax purposes are consistent with those used under the terms of the contract. The final regulations include such a rule in § 1.7702–2(c)(2).

B. Changes in Benefits Between Policy Anniversaries

The proposed regulations provide that the age of an individual insured under a life insurance contract is either (i) The insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age), or (ii) the insured's age determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract (contract age) is within 12 months of the actual age. The proposed regulations do not, however, define the attained age to be used if there is an increase in death benefits between policy anniversary dates. Specifically, should the attained age as of the beginning of the contract year continue to be used at the time of the benefit increase, even if the date of change is closer to the next contract anniversary? The comment letter requests flexibility to use the attained age as of either the previous or subsequent policy anniversary, or any age between those two ages. The final regulations address this issue by clarifying that the attained age of the insured under a contract, once determined, changes annually. This rule is set forth in § 1.7702–2(b)(2).

C. Use of Derived Ages for Multiple Life Contracts

Under the proposed regulations, the attained age of the insured under a contract insuring multiple lives is either the attained age of the youngest insured (in the case of a last-to-die contract) or the attained age of the oldest insured (in the case of a first-to-die contract). Some issuers, however, determine mortality charges under such contracts using a single, derived age that does not correspond to the attained age of any single insured under the contract. In addition, in some cases issuers currently account for substandard risks by determining mortality charges based on an age that is older than the actual attained age of the insured under the contract. The comment letter requested a rule that would permit the use of the same derived age as the *attained age* of the insured in these circumstances, to avoid whatever administrative complexities could result from the use of different ages for different purposes in the course of testing compliance of the contracts with sections 7702 and 7702A.

The final regulations do not make this change. The manner in which age is used to determine *reasonable mortality charges* under section 7702(c)(3)(B)(i) is independent of the age that is treated as the *attained age* of the insured for purposes of determining the guideline level premium under section 7702(c)(4), or applying the cash value corridor of section 7702(d) or the computational rules of section 7702(e). The final regulations do not, nor are they intended to, endorse or prohibit any methodology for determining reasonable mortality charges under section 7702(c). Reasonable mortality charges were the subject of regulations proposed July 5, 1991, (FI–069–89) (1991–2 C.B. 963) in the **Federal Register** (56 FR 30718), and also were addressed in Notice 88–128, 1988–2 C.B. 540, and Notice 2004–61, 2004–2 C.B. 596. *See* § 601.601(d)(2)(ii). This prior guidance is not modified, clarified, or in any other way affected by these final regulations.

D. Contract Anniversary

The comment letter requested that the regulations include a definition of *contract anniversary* other than the issue date of the contract and subsequent anniversaries of that date. The final regulations do not include such a definition because the terms *issue date* and *contract year* have broad application, and it would be inappropriate to address the matter for the first time in these final regulations.

E. Effective Date

The proposed regulations were proposed to apply to contracts issued on or after the date that is one year after the regulations are published as final regulations in the **Federal Register**. A taxpayer would be permitted, however, to apply these final regulations retroactively for contracts issued before that date provided the taxpayer does not later determine qualification of those contracts in a manner that is inconsistent with these regulations.

The comment letter requested that the final regulations conform more closely to the adoption dates for the 2001 Commissioners' Standard Ordinary mortality and morbidity tables (2001 CSO tables). These tables are now prevailing within the meaning of section 807(d)(5) and have a mandatory effective date of January 1, 2009. In some States, insurers have the option to use either the 1980 CSO tables or the 2001 CSO tables for contracts issued before January 1, 2009. Either changing from the 1980 CSO mortality tables to the 2001 CSO tables or adopting changes to the determination of the insured's attained age under this regulation (or both) may require filing new contract forms with the relevant state insurance commissioners and may require changes to existing compliance systems. Accordingly, the effective date of this final regulation has been adjusted to take into account the transition period for adoption of the new mortality tables. Specifically, the final regulations apply to life insurance contracts that are either (1) Issued after December 31, 2008, or (2) issued on or October 1, 2007 and based upon the 2001 CSO tables.

This modification will enable issuers to make any changes required by this final regulation concurrently with the changes required by the adoption of the 2001 CSO mortality tables. In addition, taxpayers may apply the regulations for contracts issued before October 1, 2007, provided they do not later determine qualification of those contracts under section 7702 in a manner inconsistent with the regulations.

Special Analyses

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

Drafting Information

The principal author of these final regulations is Ann H. Logan, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.7702–2 also issued under 26 U.S.C. 7702(k). * * *

■ **Par. 2.** Section 1.7702–0 is added to read as follows:

§ 1.7702–0 Table of contents.

This section lists the captions that appear in §§ 1.7702–1, 1.7702–2, and 1.7702–3.

■ **Par. 3.** Section 1.7702–2 is added to read as follows:

§ 1.7702–2 Attained age of the insured under a life insurance contract.

(a) *In general.* This section provides guidance on determining the attained age of an insured under a contract that is a life insurance contract under the applicable law, for purposes of determining the guideline level premium of the contract under section 7702(c)(4), applying the cash value corridor of section 7702(d) or applying the computational rules of section 7702(e), as applicable.

(b) *Contract insuring a single life.* (1) If a contract insures the life of a single individual, either of the following two ages may be treated as the attained age of the insured with respect to that contract—

(i) The insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age); or

(ii) The insured's age determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract (contract age) is within 12 months of the actual age as of that date.

(2) Once determined under paragraph (b)(1) of this section, the attained age with respect to an individual insured under a contract changes annually. Moreover, the same attained age must be used for purposes of applying sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(c) *Contract insuring multiple lives on a last-to-die basis*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, if a contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the youngest individual were the only insured under the contract for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(2) *Modifications to cash value and future mortality charges upon the death of insured.* If both the cash value and future mortality charges under a contract change by reason of the death of one or more insureds to no longer take into account the attained age of the deceased insured or insureds, the youngest surviving insured shall thereafter be treated as the only insured under the contract.

(d) *Contract insuring multiple lives on a first-to-die basis.* If a contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the oldest individual were the only insured under the contract for purposes of

sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(e) *Examples.* The following examples illustrate the determination of the attained age of the insured for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable. The examples are as follows:

Example 1. (i) X was born on May 1, 1947. X became 60 years old on May 1, 2007. On January 1, 2008, X purchases from IC a contract insuring X's life. January 1 is the contract anniversary date for all future years. IC determines X's annual premiums on an age-last-birthday basis. Based on the method used by IC to determine age, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on.

(ii) Section 1.7702–2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702–2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, § 1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under § 1.7702–2(b)(1)(ii), X likewise has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 2. (i) The facts are the same as in *Example 1* except that, under the contract, X's annual premiums are determined on an age-nearest-birthday basis. X's nearest birthday to January 1, 2008, is May 1, 2008, when X will become 61 years old. Based on the method used by IC to determine age, X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on.

(ii) Section 1.7702–2(b)(1) permits the determination of attained age under either of two alternative approaches. Section 1.7702–2(b)(1)(i) provides that, if a contract insures the life of a single insured individual, the attained age may be determined by reference to the individual's actual birthday as of the date of determination. Under this provision, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on. Alternatively, § 1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age as of that date. If IC determines X's attained age under § 1.7702–2(b)(1)(ii), X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on. Whichever provision IC uses to determine X's attained age must be used consistently from year to year for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 3. (i) The facts are the same as in *Example 1* except that the face amount of the contract is increased on May 15, 2011. During the contract year beginning January 1, 2011, the age assumed under the contract on an age-last-birthday basis is 63 years. However, X has an actual age of 64 as of the date the face amount of the contract is increased.

(ii) Section 1.7702–2(b)(1)(ii) provides that the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract is within 12 months of the actual age. Section 1.7702–2(b)(2) provides that, once determined under paragraph (b)(1) of this section, the attained age with respect to an individual insured under a contract changes annually. Accordingly, X continues to be 63 years old throughout the contract year beginning January 1, 2011, for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 4. (i) The facts are the same as in *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Y, born on September 1, 1942. The death benefit will be paid when the second of the two insureds dies.

(ii) Section 1.7702–2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying § 1.7702–2(b) as if the youngest individual were the only insured under the contract. Because X is younger than Y, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 5. (i) The facts are the same as *Example 4* except that X (the younger of the two insureds) dies in 2012. After X's death, both the cash value and mortality charges of the life insurance contract are adjusted to take into account only the life of Y.

(ii) Section 1.7702–2(c)(1) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying § 1.7702–2(b) as if the youngest individual were the only insured under the contract. Paragraph (c)(2) of this section provides that if both the cash value and future mortality charges under a contract change by reason of the death of an insured to no longer take into account the attained age of the deceased insured, the youngest surviving insured is thereafter treated as the only insured under the contract. Because both the cash value and mortality charges are adjusted after X's death to take into account only the life of Y, only the attained age of Y is taken into account after X's death for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

Example 6. (i) The facts are the same as *Example 1* except that in addition to X (born in 1947), the insurance contract also insures the life of Z, born on September 1, 1952. The death benefit will be paid when the first of the two insureds dies.

(ii) Section 1.7702–2(d) provides that if a life insurance contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying § 1.7702–2(b) as if the oldest individual were the only insured under the contract. Because X is older than Z, the attained age of X must be used for purposes of sections 7702(c)(4), 7702(d), and 7702(e), as applicable.

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, these regulations apply to all life insurance contracts that are either—

(i) Issued after December 31, 2008; or

(ii) Issued on or after October 1, 2007 and based upon the 2001 CSO tables.

(2) *Contracts issued before the general effective date.* Pursuant to section 7805(b)(7), a taxpayer may apply these regulations retroactively for contracts issued before October 1, 2007, provided that the taxpayer does not later determine qualification of those contracts in a manner that is inconsistent with these regulations.

Deborah M. Nolan,

Acting Deputy Commissioner for Services and Enforcement.

Approved: September 6, 2006.

Eric Solomon,

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

[FR Doc. E6–15117 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Parts 952, 953, and 964

Rules of Practice in Proceedings Relative to False Representation and Lottery Cases, Determinations of Nonmailability and Disposition of Mail Withheld From Delivery: Changes in Responsibility for Litigation

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is transferring responsibility for representation of the Postal Service in certain consumer protection administrative actions before the Judicial Officer Department from the Office of the General Counsel to the Inspection Service Office of Counsel.

DATES: Effective Date: September 13, 2006.

FOR FURTHER INFORMATION CONTACT: Diane Mego, Staff Counsel, Judicial Office, 703–812–1905.

SUPPLEMENTARY INFORMATION: Administrative adjudications involving false representation, illegal lotteries, and

false and fictitious names or addresses have been brought before the Postal Service Judicial Office Department by attorneys assigned to the Office of General Counsel, with the inspector-attorneys serving as co-counsel. These matters will now be brought before the judicial officer by representatives assigned to the Inspection Service Office of Counsel. In addition, the Inspection Service Office of Counsel will also assume responsibility for representation of the Postal Service in appeals of determinations of nonmailability arising in connection with illegal lottery materials and fraudulent payment instruments identified at ports of entry into the United States by Customs and Border Protection agents. The Office of General Counsel will, however, continue to represent the Postal Service in mailability proceedings arising from appeals of decisions of the Pricing and Classification Service Center.

List of Subjects in 39 CFR Parts 952, 953 and 964

Administrative practice and procedure, Fraud, Lotteries, Postal Service.

■ For the reasons set out in this document, the Postal Service amends 39 CFR parts 952, 953 and 964 as set forth below.

PART 952—[AMENDED]

■ 1. The authority citation for part 952 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3005, 3012, 3016.

§ 952.5 [Amended]

■ 2. In § 952.5, in the first sentence remove the words "General Counsel of the Postal Service or his designated representative" and add in their place the words "the Chief Postal Inspector or his or her designated representative." In the last sentence of the first paragraph remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or designee."

§ 952.29 [Amended]

■ 3. In § 952.29, in the second sentence remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

§ 952.30 [Amended]

■ 4. In § 952.30, in the first sentence remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

PART 953—[AMENDED]

■ 5. The authority citation for 39 CFR part 953 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

§ 953.3 [Amended]

■ 6. In § 953.3, in § 953.3(e) add the words "or Chief Postal Inspector's or his or her designee's reply" after the words "General Counsel's."

§ 953.4 [Amended]

■ 7. Amend § 953.4 as follows:

■ A. In paragraph (a) introductory text, add the words "or Chief Postal Inspector's or his or her designee's" after the words "General Counsel's."

■ B. In paragraph (a)(2)(i) add the words "or the Chief Postal Inspector or his or her designee" after the words "General Counsel."

■ C. In paragraph (b), in the first sentence add the words "or the Chief Postal Inspector or his or her designee" after the words "General Counsel" and in the second sentence add the words "or the Chief Postal Inspector's or his or her designee's" after the words "General Counsel's."

■ D. In paragraph (c), add the words ", the Chief Postal Inspector, or his or her designee," after the words "General Counsel."

§ 953.7 [Amended]

■ 8. In § 953.7 [Amended], in the first sentence add the words "or the Chief Postal Inspector or his or her designee" after the words "General Counsel." In the second sentence add the words "or the Chief Postal Inspector or his or her designee" after the words "General Counsel."

§ 953.16 [Amended]

■ 9. In § 953.16 in the third sentence add the words "or Chief Postal Inspector or his or her designee" after the words "General Counsel." In the fifth sentence, add the words "or Chief Postal Inspector or his or her designee" after the words "General Counsel."

PART 964—[AMENDED]

■ 10. The authority citation for 39 CFR part 964 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3003, 3004.

■ 11. Amend § 964.3 as follows:

§ 964.3 [Amended]

■ A. In paragraph (a), in the fifth sentence remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee." In the last sentence, remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

■ B. In paragraph (b), the last sentence, remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

■ C. In paragraph (c), remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

■ D. In paragraph (d), remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

§ 964.20 [Amended]

■ 12. In § 964.20, remove the words "General Counsel" and add in their place the words "Chief Postal Inspector or his or her designee."

Stanley F. Mires

Chief Counsel, Legislative and Policy.

[FR Doc. E6–15113 Filed 9–12–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2006–0668; FRL–8219–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Vermont Department of Environmental Conservation (VT DEC) on June 30, 2006. This negative declaration adequately certifies that there are no existing "other solid waste incineration units" (OSWIs) located within the boundaries of the State of Vermont. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, OSWIs). The State of Vermont submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on November 13, 2006 without further notice unless EPA receives significant adverse comment by October 13, 2006. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–

R01–OAR–2006–0668 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: brown.dan@epa.gov.*

C. *Fax:* (617) 918–0048.

D. *Mail:* "EPA–R01–OAR–2006–0668", Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

E. *Hand Delivery or Courier.* Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID Number EPA–R01–OAR–2006–0668. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Conservation Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Brown, Chief, Air Permits, Toxic & Indoor Air Programs Unit, Office of Ecosystem Protection (CAP), EPA—New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1048, fax number (617) 918–0048, e-mail *brown.dan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?

EPA is approving the negative declaration of air emissions from OSWI units submitted by the State of Vermont.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by October 13, 2006, this action will be effective November 13, 2006.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. What is the origin of the requirements?

Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR Part 60, Subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When did the requirements first become known?

On December 9, 2004, EPA proposed emission guidelines for OSWI units. This action enabled EPA to list OSWI units as designated facilities. By proposing these guidelines, EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants. These guidelines were published in final form on December 16, 2005 (70 FR 74870) and codified at 40 CFR part 60, subpart EEEE.

IV. When did Vermont submit its negative declaration?

On June 30, 2006, the Vermont Department of Environmental Conservation (VT DEC) submitted a letter certifying that there are no existing OSWI units subject to 40 CFR Part 60, Subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of "negative declaration" instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.11490.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d) submissions, EPA's role is to approve state plans, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2006. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: September 2, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

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

Subpart UU—Vermont

■ 2. Subpart UU is amended by adding a new § 62.11490 and a new undesignated center heading to read as follows:

Air Emissions From Existing Other Solid Waste Incineration Units

§ 62.11490 Identification of Plan-negative declaration.

On June 30, 2006, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.

[FR Doc. E6–15198 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0695; FRL–8089–7]

Eucalyptus Oil; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of eucalyptus oil on honey and honeycomb when applied at 2 g or less eucalyptus oil per hive to suppress varroa mites. Brushy Mountain Bee farm, c/o IR-4 Project submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of eucalyptus oil in honey and honeycomb.

DATES: This regulation is effective September 13, 2006. Objections and requests for hearings must be received on or before November 13, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0695. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9525; e-mail address: *benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112)..
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0695 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 13, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0695, 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.

IL Background and Statutory Findings

In the **Federal Register** of July 19, 2006 (71 FR 41018) (FRL–8077–8), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition PP 6E7082 by Brushy Mountain Bee farm, c/o IR-4 Project Rutgers University, 681 U.S. Highway 1 South, North Brunswick, New Jersey 08902. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of eucalyptus oil. This notice included a summary of the petition prepared by the petitioner Brushy Mountain Bee farm, c/o IR-4 Project Rutgers. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption 6efrom the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... " Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues " and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Eucalyptus oil (EO) is an essential oil that is obtained from steam distillation of the leaves of *Eucalyptus globulus*. Eucalyptus oil has a long history of safe medicinal uses and has been classified by FDA as a GRAS substance and permitted as a direct additive to foods for human consumption (21 CFR 172.510). It is used as a component of decongestant products, as an expectorant component of cough and cold products, in various oral dosages from (e.g., lozenges and syrups), and as an inhalant in vapor baths, etc. In 2002, 100,000 tons of Halls cough drops were consumed. There are no incident reports of adverse effects associated with exposures to EO.

There is limited information in the public literature and information reported by the FDA that provides a limit to the levels of EO that can be present in foods and or medicines. One exception however, is that EO is currently allowed at 1.2 to 1.3% (12,000 to 13,000 mg/kg) as a topical antitussive drug in mixtures with camphor and menthol (21 CFR 341.14(b); 341.40(u); 341.74(b),(c),(d)). A topical antitussive is defined as a drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer or when dissolved in the mouth in the form of a lozenge for a local effect (21 CFR 341.3(c). Eucalyptus oil can be used orally in cough drops at 162 to 2,000 mg/kg (Ref. 1). There is information in the public literature that EO is known to be toxic at high levels. However, based on the most likely use pattern for EO as a pesticide, the Agency has determined that EO, when used as a pesticide, will be safe because it is likely to be used at very low levels. The lack of information in the public literature on the levels of EO that is present in certain foods and medicines is due to a lack of an available method to detect residues of eucalyptus oil in foods and medicines. This is primarily due to the fact that most essential oils from plants such a *Eucalyptus* spp. contain many components and therefore, may be difficult to characterize the actual oil component. Eucalyptus oil from *Eucalyptus globulus* is composed eucalyptol, triterpenes, monoterpenes, sesquiterpenes, aldehydes and ketones of which eucalyptol (1,8-cineole) makes up to 80% or more of EO. Since there is no method of detection for EO in foods, the Agency has conducted a dietary risk assessment in order to estimate the exposure to eucalyptus oil when used as a pesticide in or on honey and honey comb.

Toxicity data requirements were satisfied by the registrant with data and/or information from the public literature and requests to waive toxicity testing for the studies below. Data waiver rationales were provided and were acceptable and therefore data waivers were granted by the Agency.

A. Acute and Short-term Toxicity

Information submitted by the applicant demonstrated that acute oral LD_{50} values for EO is 4,400 mg/kg body weight in rats, 3,320 mg/kg body weight in mice, and a dermal LD_{50} of > 5,000 mg/kg body weight in rabbits. These classify EO as Toxicity Category IV for acutely toxic oral and dermal effects. EO is also a mild dermal irritant (Ref. 2). Embryotoxicity and fetotoxicity were not observed in a teratogenicity study in which mice were dosed with EO (from *Eucalyptus globulus*) subcutaneously during days 6-15 of gestation (Ref. 1).

Acute inhalation toxicity and primary eye irritation studies on EO were waived because the product requires personal protective equipment equivalent to Toxicity Category I. Inhalation and eye irritation only apply to workers using the product and not to people consuming the honey because the EO residue levels in honey are so low (0.125 ppm) when applied at 2g or less EO per hive. In addition, EO has a long history of safe use as a common ingredient in ointments applied to the skin and steam vaporizer solution for the relief of cold and flu symptoms. Hypersensitivity incidents must be reported to the Agency. No incidents have been reported during the last few years when EO in combination with other compounds has been used under the FIFRA section 18 program to control Varroa mites in bees.

B. Genotoxicity / Mutagenicity

Data submitted supported the waiver request for genotoxicity. No genotoxicity was observed following exposure of eucalyptus oil to *Salmonella* strains TA100, TA1535, TA1537, TA98 in tests with or without activation by rat and hamster liver S9 fractions (Ref. 3). An additional study (Ref. 4) also reported that eucalyptol, the main component of eucalyptus oil, was negative for mutation in *S. typhimurium* strains TA100, TA97A, TA98, TA102 both with and without metabolic activation (via rat liver S-9). Other *in vitro* studies show a weak positive to positive increases in sister chromatid exchanges were reported in Chinese hamster ovary (CHO) cells without metabolic activation (Ref. 5). Equivocal or weakly positive increases in chromosome aberrations were observed in CHO cells with S9 metabolic activation (Ref. 5). Overall, the weight of evidence suggests that EO is not genotoxic or mutagenic.

C. Subchronic Toxicity

Oral subchronic studies are typically required when the pesticidal use requires a tolerance or an exemption from the requirement of a tolerance, a food additive regulation, or its use results in repeated human oral exposure. Dietary subchronic exposure to EO in honey is probable. EO residues are found in other food items at significantly higher concentrations than those resulting from pesticidal treatments. Because the dietary contribution of EO from honey is expected to be negligible compared to that already in the diet, subchronic studies are not required.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency believes that establishing a tolerance exemption for residues of eucalyptus oil in or on honey or honey comb will not cause any new exposure that would not be safe. As mentioned in Unit III., the U.S. population in general is already exposed to EO from the consumption of cough lozenges and other food products at levels which are equivalent to the limit levels for this tolerance exemption without any reports of adverse effects. Further, the daily exposure to EO from honey consumption is negligible when compared to the level ingested for therapeutic use. In order to validate the determination that any new exposure from the use of eucalyptus oil is safe, the Agency conducted a dietary risk assessment using magnitude of residue data measuring eucalyptol and adjusted by 20 percent because eucalyptol is 80 percent of EO. As a result of this risk assessment, the Agency concludes that the use of EO when used as a pesticide on honey or honey comb to suppress varroa mites when applied at 2g or less EO will not add any new exposures or risks and is considered safe.

A. Dietary Exposure

A dietary risk was estimated by comparing theoretical exposures using the EO residues approved for use by FDA in cough drops as stated above.

These theoretical exposures were compared to the current consumption of eucalyptol, the therapeutic dose of eucalyptol. Comparisons were not calculated for the infant population because honey is generally not recommended for infant consumption due to the dangers it can pose to infants. Before comparisons could be made, exposures had to be put into terms of EO, not the marker analyte eucalyptol as described above. The amount of eucalyptus oil allowed in cough drops is 2,000 ppm which is 16,000 times that found in the honey submitted residue trial (Ref. 6).

Based on the dietary risk assessment conducted by the Agency, it has been determined that daily exposures to EO from honey consumption would be orders of magnitude less than the level ingested for therapeutic use. Therefore, the Agency concludes that residues of EO in honey when applied at 2g or less per hive are of no dietary concern to the U.S. population including children.

1. *Food.* Eucalyptus oil is commonly found in numerous food items such as yellow cake, vanilla ice cream, cola beverages, and caramel candy. In 2002, people consumed 100,000 tons of Halls drops (*http://www.cadburyschweppes.com/EN/Brands/About/Confectionery/factsheet_halls.htm*); while in the Northern Hemisphere these are sold as cough drops, other parts of the world consume them as candy. The daily exposure to EO from honey consumption when used at 2g or less is orders of magnitude less than the level ingested for therapeutic use (Ref. 1). Therefore, residues of EO in honey are not considered a dietary concern. Conservative exposure estimates and the use of lowest toxicity concentrations ensure that residues of EO present a reasonable certainty of no harm. Therefore, no adverse effects associated with exposures to EO by oral route are expected from the use of EO as a pesticide when used at 2g or less EO per hive.

2. *Drinking water exposure.* No exposure to EO residues in drinking water is expected because the use of this product is limited to application within the hive box in which the product is contained in a dispenser tray, where the product is rapidly volatilized or redistributed.

3. *Magnitude of the Residue in/on Honey and Honeycomb.* The end-use product, ApiLife VAR, has acceptable magnitude of the residue data on eucalyptol in honey and honeycomb when used as a treatment for Varroa mites in bee hives (Ref. 6; Ref. 7). Eucalyptol is the marker analyte for EO and comprises 80% (v/v) of the original mixture. Residue estimates and dietary exposures estimated with eucalyptol (0.1 mg/kg) were modified to account for the percentage of eucalyptol in EO (80%). Essentially, this meant increasing these estimates by 20% (equivalent to 0.125 mg/kg EO residues). The dietary exposure of eucalyptol in honey is below EPA's levels of concern for all population subgroups (Ref. 1).

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to EO residues for the general population, including infants and children, is unlikely because the proposed use-site is limited to beehives.

V. Cumulative Effects

There is no indication that the toxic effects of EO are cumulative. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, EPA consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.

EPA does not have, at this time, available data to determine whether EO has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to EO and any other substances and EO does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that EO has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm will result to the U.S. population including children from aggregate exposure to residues of EO as a result of its use as a pesticide in or on honey and honey comb when used at 2g or less EO per hive since no toxicity is expected and the U.S. population in general is already exposed to EO from the consumption of cough lozenges at much higher levels without any reports of adverse effects. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The anticipated residues in honey are at 0.125 ppm, which is more than 16,000 times lower than the established acceptable level in cough lozenges. Moreover, at high levels, EO gives off an undesirable or ill taste to the palate when consumed at levels which far exceed those levels reported for medicinal uses such as teas. For these reasons, it is unlikely that EO will be consumed at levels exceeding those reported here based on the undesirable taste alone. In addition, there is very little potential for exposure to EO from drinking water since the product will volatize or exposure and is limited to beehives or from non dietary, non occupational exposure since its use is limited to beehives. Therefore, based on its long history of safe use therapeutic and medicinal agents without any reports of any toxic or adverse effects and the fact that EO is classified by FDA as a substance that is generally recognized as safe (GRAS) when used as a direct additive to foods for human consumption, the Agency believes that the health risk to humans is negligible and concludes that there is a reasonable certainty that no harm will result from aggregate exposures to EO.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen- and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening

of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

At this time, the Agency is not requiring information on the endocrine effects of this active ingredient, EO. Based on the weight of the evidence of available data and the absence of any reports to the Agency of sensitivity or other adverse effects, no endocrine system related effects are identified for EO and none is expected because of its use. To date there is no evidence that EO affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this proposed rule to establish an exemption from the requirement of a tolerance for residues of EO used at 2g or less EO per hive.

B. Analytical Method

Through this action the Agency proposes to establish an exemption from the requirement of a tolerance for EO on honey and honeycomb when used at 2g or less EO per hive to suppress varroa mites. This decision was reached based on the reasons stated above which include low toxicity to mammals and negligible exposure from the pesticidal use of products containing EO. For the same reasons, the Agency concludes that an analytical method is not required for enforcement purposes for EO.

C. Codex Maximum Residue Level

There are no CODEX maximum residues levels for EO.

VIII. Conclusions

Based on the data submitted and other information available to the Agency, there is a reasonable certainty that no harm will result from the aggregate exposure to residues of EO to the U.S. population, including infants and children, under reasonable foreseeable circumstances, when the biochemical pesticide EO is used in accordance with the product label directions and at 2 g or less eucalyptus oil per hive. This includes all anticipated dietary exposures and all other non-occupational exposures for which there is reliable information. The Agency has arrived at this conclusion based on the information/data submitted (and publicly available) demonstrating relatively low toxicity of EO. As a result, EPA is establishing an exemption from the tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of EO in or on honey, honeycomb and honeycomb with honey when used at 2g or less EO per hive.

IX. References

1. August 8, 2006. EPA Memo: Api Life VAR: Toxicology Review and a Dietary Exposure Assessment for Eucalyptus Oil (CAS No. 6000–48–4) in Support of an Exemption for the Requirement of a Tolerance. Kent Carlson to Driss Benmhend.

2. Inchem. 2004. Aliphatic and Aromatic Ethers. Chapter 2.2.2 Toxicological Studies. JEFCA. 52

3. National Toxicology Program. 1982. *Salmonella* assay for genetic toxicity from exposure to 1,8 cineole. Study 246429.

4. Gomes-Carneiro. R. 1998. Mutagenicity testing ()-camphor, 1,8 cineole, citral, citronellol, (-)-menthol, and terpineol with the Salmonella microsome assay. Mutation Research. 416(1-2). 129-136.

5. National Toxicology Program. 1982. CHO cell cytogenetics; chromosome aberrations and sister chromatid exchanges from exposure to 1,8 cineole. Study 590755.

6. July 25, 2005. MRID 466828-01.. Thymol, Eucalyptol, Campho: Magnitude of the Residue on honey and beeswax. IR-$ PR No. 08661. 251pp.

7. June 29, 2006. EPA Memo: Apilife VAR: Dietary Exposure Assessment Involving Review of Toxicology and Exposure Data to Address Application . to Bee Hives. Kent Carlson to Driss Benmhend.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure

"meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 2006.

James Jones,

Director, Office of Pesticides Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1271 is added to subpart D to read as follows:

§ 180.1271 Eucalyptus oil; exemption from the requirement of a tolerance.

An exemption from the requirement of tolerance is established for residues of eucalyptus oil in or on honey, honeycomb, and honeycomb with honey when used at 2g or less eucalyptus oil per hive, where the eucalyptus oil contains 80% or more eucalyptol.

[FR Doc. E6–14995 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0024; FRL– 8085–1]

Difenoconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole), when used as a seed treatment in or on barley, hay; barley, straw; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover; cotton, gin byproducts; cotton, undelinted seed; and as a foliar treatment on fruit, pome, group 11 (import); and on grape (import). Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This rule also revises the chemical name of the active ingredient, difenoconazole, from [(2S,4R)/(2R/4S)]/[(2R/4R)]/(2S,4S) 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, to the following, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole). EPA is also deleting certain difenoconazole tolerances that are no longer needed as result of this action.

DATES: This regulation is effective September 13, 2006. Objections and requests for hearings must be received on or before November 13, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0024. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail address: *kish.tony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0024 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 13, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0024, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2006 (71-FR 18748) (FRL–7765–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 0F6155, 6F4748, 8F4953, and 9E5076) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.475 be amended by establishing tolerances for residues of the fungicide difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole), when used as a seed treatment, in or on barley, hay at 0.05 parts per million (ppm) (PP 6F4748); barley, straw at 0.05 ppm (PP 6F4748); corn, sweet, forage at 0.01 ppm (PP 0F6155); corn, sweet, kernel plus cob with husks removed at 0.01 ppm (PP 0F6155); corn, sweet, stover at 0.01 ppm (PP 0F6155); cotton, gin byproducts at 0.05 ppm (PP 8F4953); cotton, undelinted seed at 0.05 ppm (PP 8F4953); and as a foliar treatment on fruit, pome, group 11 at 0.10 ppm (PP 9E5076); and on grape at 0.1 ppm (9E5076). That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

Syngenta requested a tolerance of 0.05 ppm on barley, forage. However, a tolerance is not being established for barley forage because: It is an insignificant animal feed item; it is not included in Table 1 of the Residue Chemistry Test Guidelines, OPPTS 860.1000; and it is not an accepted name in the Food and Feed Commodity Vocabulary (*http://www.epa.gov/pesticides/foodfeed/*); for these reasons, a tolerance is not required.

EPA is also deleting several established tolerances in § 180.475(b) that are no longer needed, as a result of this action. The tolerance deletions under § 180.475(b) are time-limited tolerances established under section 18 emergency exemptions that are superceded by the establishment of permanent tolerances for difenoconazole § 180.475(a). The revisions to § 180.475 are as follows:

1. Delete the time-limited tolerance (expires 12/31/08) for corn, sweet, kernel plus cob with husks removed at 0.1 ppm under § 180.475(b), because a permanent tolerance for corn, sweet, kernel plus cob with husks removed at 0.01 ppm is being established by this action under § 180.475(a).

2. Delete the time-limited tolerance (expires 12/31/08) for corn, sweet, forage at 0.1 ppm under § 180.475(b), because a permanent tolerance for corn, sweet, forage at 0.01 ppm is being established by this action under § 180.475(a).

3. Delete the time-limited tolerance (expires 12/31/08) for corn, sweet, stover at 0.1 ppm under § 180.475(b) because a permanent tolerance for corn, sweet, stover at 0.01 ppm is being established by this action under § 180.475(a).

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole), when used as a seed treatment in or on barley, hay at 0.05 ppm; barley, straw at 0.05 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, kernel plus cob with

husks removed at 0.01 ppm; corn, sweet, stover at 0.01 ppm; cotton, gin byproducts at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; and as a foliar treatment on fruit, pome, group 11 at 0.10 ppm; and on grape at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by difenoconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at the following website: *http://www.epa.gov/fedrgstr/EPA-PEST/2000/September/Day-15/p23773.htm*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for difenoconazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 15, 2000 (65 FR 55911) (FRL–6589–3).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.475) for the residues of difenoconazole, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from difenoconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The only population subgroup for which an acute dietary exposure analysis was performed was females 13–49 years old. No endpoint of concern for the general population that was attributable to a single exposure (dose) from the oral toxicity studies was identified. The Dietary Exposure Evaluation Model with Food Commodity Intake Database (DEEM-FCID™, version 2.03) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues; 100% percent of each crop treated; and DEEM™, version 7.76, processing factors for all proposed and registered commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, version 2.03, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues for barley, rye, and all proposed commodities; anticipated residues for all previously registered commodities, except barley and rye; 100% of each crop treated; and DEEM™, version 7.76, default processing factors for all commodities.

iii. *Cancer.* The Agency determined that a reference dose (RfD) approach is appropriate to evaluate potential cancer risk to difenoconazole because the chronic RfD is lower than the cancer RfD. No separate exposure assessment was conducted for evaluating cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for difenoconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of difenoconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppfead1/trac/science*.

Based on the First Index Reservoir Screening Tool (FIRST) and screening concentration in groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of difenoconazole for acute exposures are estimated to be 0.60 parts per billion (ppb) for surface water and 0.00084 ppb for ground water. The EECs for chronic exposures are estimated to be 0.14 ppb for surface water and 0.00084 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Difenoconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether

to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between this pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of. major biochemical events (EPA, 2002). A variable pattern of toxicological responses are found for conazoles. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles have a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to the toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*. The Agency's risk assessment for the common metabolites is available in the propiconazole reregistration docket at *www.regulations.gov* in docket ID number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* The evidence shows that difenoconazole is neither a developmental nor a reproductive toxicant, and that there are no residual uncertainties in the toxicology database for difenoconazole. Therefore, infants and children are not expected to exhibit increased sensitivity and the Agency's LOC for prenatal and postnatal toxicity is not exceeded.

3. *Conclusion.* The Agency has concluded that the default 10x FQPA Safety Factor should be reduced to 1x in assessments of both acute and chronic dietary exposures, for the following reasons: There is a complete toxicological database for difenoconazole; there was no evidence of increased pre-natal or post-natal susceptibility to difenoconazole; difenoconazole is neither a developmental nor a reproductive toxicant; exposure data are complete, or are estimated, based on data that reasonably account for potential exposures; and there is high overall confidence in the risk assessment.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy <1.0% of the acute population adjusted dose (aPAD) for females 13–49 years old. An endpoint of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies (including the rat and rabbit developmental toxicity studies) for the general U.S. population, or for the infants and children subgroups, therefore acute risk analyses were not performed for these groups.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 2.4% of the chronic population adjusted dose (cPAD) for the U.S. population; 10% of the cPAD for all infants (<1 year old); and 16% of the cPAD for children 1–2 years old. There are no residential uses for difenoconazole that result in chronic residential exposure to difenoconazole.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure in addition to chronic exposure to food and water (which are considered to be the background exposure level).

Difenoconazole is not registered for use on any site(s) that would result in residential exposure, so the aggregate short-term risk is solely the sum of the risk from food and water. These risks do not exceed the Agency's LOC.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Difenoconazole is not registered for use on any site(s) that would result in residential exposure, so the aggregate short-term risk is solely the sum of the risk from food and water. These risks do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population.* The Agency determined that an RfD approach is appropriate to evaluate potential cancer risks to difenoconazole. The chronic risk assessment adequately protects against cancer risk because the chronic RfD is lower than the cancer RfD.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available for tolerance enforcement. Method AG-575B, the current enforcement method for plant commodities, quantitates levels of difenoconazole by gas chromatography (GC) with nitrogen/phosphorous (N/P) detection. Its limit of quantitation (LOQ) is 0.01 ppm for difenoconazole residues. Method AG-544, the current enforcement method for livestock commodities, also quantitates levels of difenoconazole by GC with N/P detection. The LOQs for difenoconazole residues using this method are 0.01 ppm in meat and eggs and 0.01 ppm in milk. Additionally a GC/mass-spectrometry detection (MSD) method for the confirmation of difenoconazole residues in/on canola seed has recently undergone petition method validation (PMV) at EPA's Analytical Chemistry Lab (ACL). The confirmatory method has been determined to be suitable for tolerance enforcement once the

revisions recommended by ACL are incorporated into it.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for difenoconazole. Therefore, no conflict exists between any of the existing and proposed U.S. difenoconazole tolerances and any difenoconazole MRL.

C. Response to Comments

A notice of filing was published in the **Federal Register**, of April 12, 2006 (71 FR 18748, FRL–7765–7, EPA–HQ–OPP–2006–0024). No public comments were received regarding the notice.

V. Conclusion

Tolerances are established for residues of difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole), when used as a seed treatment, in or on barley, hay at 0.05 ppm; barley, straw at 0.05 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.01 ppm; cotton, gin byproducts at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; and as a foliar treatment on fruit, pome, group 11 at 0.10 ppm; and on grape at 0.10 ppm.

This rule also changes the chemical name of the active ingredient, difenoconazole, from (2S,4R)/(2R/4S)]/[(2R/4R)]/(2S,4S) 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, to the following, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole). The change in the chemical name of the active ingredient is necessary to conform to the nomenclature of the Chemical Abstracts Service, the body which the Office of Pesticide Programs regards as authoritative for issues of chemical nomenclature. This name change makes no substantive change to either the chemical identity of difenoconazole or to the effect of the tolerances.

EPA is not establishing the requested tolerance of 0.05 ppm on barley, forage, because as stated previously, a tolerance is no longer required for this commodity. EPA is also deleting several established tolerances in Sec.180.475 (b) that are no longer needed, as a result of this action: 0.1 ppm on corn, sweet, kernel plus cob with husks removed with a 12/31/08 expiration date; 0.1 ppm on corn, sweet, forage with a 12/31/08 expiration data; and 0.1 ppm on corn, sweet, stover with a 12/31/08 expiration date.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.475 is amended as follows:

■ i. In paragraph (a) by revising the chemical name of the active ingredient, difenoconazole, from "(2S,4R)/(2R/4S)]/[(2R/4R)]/(2S,4S) 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole" to "(1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole)"; by alphabetically adding commodities to the table; and

■ ii. Paragraph (b) is removed and reserved.

■ The amendments read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Barley, hay	0.05
Barley, straw	0.05
* * *	* *
Corn, sweet, forage	0.01
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.01
Cotton, gin byproducts	0.05
Cotton, undelinted seed	0.05
* * *	* *
Fruit, pome, group 11[3]	0.10
* * *	* *
Grape[3]	0.10
* * *	* *

[3] There are no U.S. Registrations on fruit, pome, group 11 or on grapes, as of September 13, 2006.

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. E6–15090 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0071; FRL–8080–9]

Epoxiconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of epoxiconazole in or on bananas and coffee. BASF Corporation, Agricultural Products requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 13, 2006. Objections and requests for hearings must be received on or before November 13, 2006.

ADDRESSES: EPA has established a docket for this action under docket Identification (ID) number EPA–HQ–2005–0071. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address:waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affectedP entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0071 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 13, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0071, 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 telephone number for the Docket Facility is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 22, 2000, (65 FR 57338) (FRL–6737–8), and February 15, 2006, (71 FR 7952) (FRL–7759–5), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 7E4885 and 0E6128) by BASF Corporation, Agricultural Products, P.O. Box 13528; Research Triangle Park, NC 27709–3528. These petitions requested that 40 CFR 180 be amended by establishing tolerances for residues of the fungicide epoxiconazole, (2RS, 3SR)-3-(2-chlorophenyl)-2-(4-fluorophenyl)-2(1*H*-1,2,4-triazol-1-yl)methyl oxirane, in or on bananas at 0.5 parts per million (ppm) (PP 7E4885) and coffee, bean at 0.05 ppm (PP 0E6128). These notices included a summary of the petition prepared by BASF, the registrant. Comments were received on the notices of filing. EPA's response to these comments is discussed in Unit IV., C below.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of epoxiconazole in or on bananas at 0.5 parts per million (ppm) and coffee, bean at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by epoxiconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* under the docket ID number EPA–HQ–OPP–2005–0071–0005.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk and estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/oppfead1/trac/science/*, and *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

Summaries of the toxicological endpoints for epoxiconazole used for the human risk assessment are shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR EPOXICONAZOLE FOR USE IN HUMAN RISK ASSESSMENT.

Exposure/Scenario	Dose used in risk assessment, interspecies and intraspecies and any traditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Acute dietary (females 13-49 years of age).	NOAEL = 5 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/ Special FQPA SF = 0.05 mg/kg/day	Developmental toxicity - rat LOAEL = 15 mg/kg/day based on increased incidence of skeletal variations
Chronic dietary (all populations)	NOAEL = 2 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/ Special FQPA SF = 0.02 mg/kg/day	2–Year rat carcinogenicity LOAEL = 7 mg/kg/day based on increased incidences of ovarian cysts and adrenal histopathological findings in females
Cancer (oral, dermal, inhalation)	Classification: Likely human carcinogen with a Q_1^*(mg/kg/day)$^{-1}$ of 3.04×10^{-2} by oral route based on the occurrence of liver tumors in male and female mice		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* This final rule establishes the first tolerances for residues of epoxiconazole in or on imported bananas and coffee. There are no registered uses in the United States, therefore the only expected exposure to epoxiconazole is from imported bananas and coffee. Risk assessments were conducted by EPA to assess dietary exposures from epoxiconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis was based on the highly conservative assumption of tolerance-level residues and 100% crop treated (CT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis was based on the highly conservative assumption of tolerance-level residues and 100% CT.

iii. *Cancer.* The Agency classified epoxiconazole as "likely to be carcinogenic to humans" by the oral route based on the occurrence of liver tumors in male and female mice. The cancer dietary exposure estimate for the general U.S. population is 3×10^{-5} mg/kg/day. The cancer dietary exposure assessment was performed for the general U.S. population using anticipated residues, and 100% CT. Anticipated residues were calculated for coffee and banana using the average field trial values from the crop field trial data.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* There is no expectation that epoxiconazole residues would occur in surface water or ground water sources of drinking water. Epoxiconazole is proposed for use only on imported coffee and banana commodities, the sole anticipated exposure route for the U.S. population is via dietary (food) exposure. There are no registered uses of epoxiconazole in the United States.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Epoxiconazole is not registered for use on any sites that would result in residential exposure and a non-dietary risk assessment is not required.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the mulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Epoxiconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between this pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). A variable pattern of toxicological responses are found for conazoles. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in

rodents. Furthermore, the conazoles have a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to the toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*. The Agency's risk assessment for the common metabolites is available in the prothioconazole reregistration docket at *http://www.regulations.gov*, docket ID number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.*– a. There is no evidence of susceptibility following *in utero* exposure in the rabbit developmental toxicity and both *in utero* and postnatal exposure in the 2-generation rat reproduction study.

b. There is low concern for the susceptibility seen in the rat developmental toxicity study because the effects observed were relatively mild for both the pregnant dams (decrease in body weight gain/food consumption) and the rat pups (increased incidence of minor skeletal variations - rudimentary cervical ribs and accessory 14th rib).

c. There does not appear to be any enhanced susceptibility in the young to endocrine effects based on the results of the two-generation study (parental male reduced adrenal weights were not observed in offspring).

d. Although there is some uncertainty associated with the acute and subchronic neurotoxicity data, it is unlikely that the information requested to upgrade these studies will alter the NOAELs used for the dietary endpoints. This is because the positive findings in the acute neurotoxicity study were mild and at high doses (1,000 mg/kg in males and 2,000 mg/kg in females). Also, the piloerection observed in the females in the acute neurotoxicity study would likely have been noted or recorded during the subchronic and chronic rodent studies as part of the daily cageside observations for clinical signs. Clinical observations were made, but no signs were noted in any of the studies. This suggests that chronic exposure up to 80 mg/kg/day in rats (rat carcinogenicity study) does not lead to readily observable clinical signs such as piloerection.

e. The non-cancer dietary food exposure assessment utilizes proposed tolerance level residues and 100% CT information for all commodities. By using these screening-level assessments, acute and chronic exposures/risks will not be underestimated.

f. Drinking water and residential exposure are not expected.

3. *Conclusion.* There is a complete toxicity data base for epoxiconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* and/or postnatal exposure in the rabbit developmental toxicity and in the 2-generation rat reproduction study. There is low concern for the susceptibility seen in the rat developmental toxicity study and no residual uncertainty for prenatal and/or postnatal toxicity. There is no evidence of significant neurotoxicity, as indicated by both the acute and subchronic neurotoxicity studies. Acute and chronic dietary food exposure estimates are based on conservative (Tier 1) assumptions, and will not underestimate exposure/risk. There is no potential for drinking water or residential exposure. Based on these data and conclusions, there are no FQPA UFs and the FQPA Safety Factor can be reduced to 1x.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to epoxiconazole will occupy 2% of the aPAD for females 13-49 years, the only population subgroup of concern. There are no proposed or existing residential uses for epoxiconazole. The proposed uses are limited to imported bananas and coffee. Since there are no registered uses associated with epoxiconazole in the U.S., the only route of exposure is dietary (food only). Aggregate risk is limited to dietary exposure (food only) and does not exceed the Agency's level of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to epoxiconazole from food will utilize 1.0% of the cPAD for the U.S. population, 3.7% of the cPAD for all infants <1 year, and 4.6% of the cPAD for children 1-2 years, the most highly exposed population subgroup. There are no residential uses for epoxiconazole that result in chronic residential exposure to epoxiconazole, and no exposure is expected from drinking water. Therefore, aggregate risk does not exceed the Agency's level of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Epoxiconazole is not registered for use on any sites that would result in residential exposure and there is no expectation that epoxiconazole residues would occur via drinking water consumption. Therefore, the aggregate risk is the sum of the risk from food, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Epoxiconazole is not registered for use on any sites that would result in residential exposure and there is no expectation that epoxiconazole residues would occur via drinking water consumption. Therefore, the aggregate risk is the sum of the risk from food, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency classified epoxiconazole as "likely to be carcinogenic to humans" by the oral route based on the occurrence of liver tumors in male and female mice. The estimated unit risk, Q_1^* is 3.04×10^{-2}. The cancer dietary exposure estimate for the general U.S. population is 9.03 x

10^{-7} which is below the Agency's level of concern (generally in the range of $1x\ 10^{-6}$).

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to epoxiconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/electron capture detector (GC/ECD) method - BASF method 309/1) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 0755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

Codex Alimentarius and Canada have not established or proposed any MRLs for epoxiconazole. As there are no established or proposed MRLs for either banana or coffee, harmonization with international tolerances is not an issue for the current petitions.

C. Response to Comments

A private citizen responded to PP 0E6128. Comments were received on February 15, 2006 objecting to the use, manufacturing and sale of this product. The comments further stated that not enough tests have been completed (long term or combined tests), that there is little indication of safety and questioned the validity of animal testing.

The Agency response is as follows: The Agency has a complete toxicity database on epoxiconazole, including several long-term or chronic studies. The commenter submitted no scientific information or data to support their claims. For additional in-depth response, refer to docket EPA–HQ–OPP–2004–0325, 69 FR 63083 at *http://www.regulations.gov.*

V. Conclusion

Therefore, tolerances are established for residues of epoxiconazole, [*rel*-1-[[(2R,3S)-3-(2-chlorophenyl)-2-(4-fluorophenyl)oxiranyl]methyl]-1*H*-1,2,4-triazole], in or on bananas at 0.5 ppm and coffee at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure"meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2006.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.619 is added to read as follows:

§ 180.619 Epoxiconazole; tolerances for residues.

(a) *General.* Tolerances are established for the residues of the fungicide epoxiconazole [(*rel*-1-[[(2R,3S)-3-(2-chlorophenyl)-2-(4-fluorophenyl)oxiranyl]methyl]-1*H*-1,2,4-triazole]) in or on the following commodities:

Commodity	Parts per million
Banana*	0.5
Coffee*	0.05

*No U.S. Registration as of August 4, 2006

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional Registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E6–14994 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2006–0575; FRL–8219–5]

Alabama: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Alabama has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Alabama. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Final authorization will become effective on November 13, 2006 unless EPA receives adverse written comment on or before October 13, 2006. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2006–0575 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: middlebrooks.gail@epa.gov.*
- *Fax:* (404) 562–8439 (prior to faxing, please notify the EPA contact listed below).
- *Mail*: Send written comments to Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery:* Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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–R04–RCRA–2006–0575. 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 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 *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov*, or in hard copy. You may view and copy Alabama's application at the EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Library is open from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Library telephone number is (404) 562–8190.

You may also view and copy Alabama's application from 8 a.m. to 4:30 p.m. at The Alabama Department of Environmental Management, 1400 Coliseum Blvd., Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8494; fax number: (404)

562–8439; e-mail address: *middlebrooks.gail@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Alabama's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Alabama Final authorization to operate its hazardous waste program with the changes described in the authorization application. Alabama has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDF) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Alabama, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this decision is that a facility in Alabama subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Alabama has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Alabama is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Alabama Previously Been Authorized for?

Alabama initially received Final authorization on December 8, 1987, effective December 22, 1987 (52 FR 46466) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on November 29, 1991, effective January 28, 1992 (56 FR 60926), May 13, 1992, effective July 12, 1992 (57 FR 20422), October 21, 1992, effective December 21, 1992 (57 FR 47996), March 17, 1993, effective May 17, 1993 (58 FR 20422), September 24, 1993, effective November 23, 1993 (58 FR 49932), February 1, 1994, effective April 4, 1994 (59 FR 4594), November 14, 1994, effective January 13, 1995 (59 FR 56407), August 14, 1995, effective October 13, 1995 (60 FR 41818), February 14, 1996, effective April 15, 1996 (61 FR 5718), April 25, 1996, effective June 24, 1996 (61 FR 5718), November 21, 1997, effective February 10, 1998 (62 FR 62262), December 20, 2000, effective February 20, 2001 (65 FR 79769), March 15, 2005, effective May 16, 2005 (FR 70 12593), and on June 2, 2005, effective August 1, 2005 (70 FR 32247).

G. What Changes Are We Authorizing With This Action?

On March 6, 2006, Alabama submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Alabama's revision consists of provisions promulgated July 1, 2003, through June 30, 2004, otherwise known as RCRA Cluster XIV. The Alabama Department of Environmental Management adopted the rules for RCRA Cluster XIV effective March 31, 2005. We can now make an immediate final decision, subject to receipt of written comments that oppose this action, that Alabama's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Alabama Final authorization for the following program changes:

Alabama Department of Environmental Administrative Code, Division 335–14, Hazardous Waste Program Regulations effective March 31, 2005.

Description of Federal requirement	Federal Register	Analogous state authority
Checklist 203, Recycled Used Oil Management Standards; Clarification.	July 30, 2003, 68 FR 44659–44665.	335–14–2–.01(5)(j), 335–14–17.02, 335–14–17–.02(1)(i), 335–14–17–.08(5)

Description of Federal requirement	Federal Register	Analogous state authority
Checklist 205, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.	April 26, 2004, 69 FR 22602–22661.	335–14–5–.28(1), 335–14–6–.28(1)

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Alabama will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization.

EPA will continue to implement and issue permits for HSWA requirements for which Alabama is not yet authorized.

J. What Is Codification and Is EPA Codifying Alabama's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart B for this authorization of Alabama's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 13, 2006.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 31, 2006.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. E6–15201 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 05–24; FCC 06–123]

DTV Tuner Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a Petition for Reconsideration or Clarification of the Commission's *Second Report and Order* in this proceeding, submitted on behalf of PDI Communications Systems, Inc. (PDI) and a subsequent Supplement to Petition for Clarification also filed on behalf of PDI in this same matter.

DATES: Effective October 13, 2006.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: *Alan.Stillwell@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 05–24, FCC 06–123, adopted August 15, 2006 and released August 17, 2006. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing, Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Order

1. The Commission addressed a Petition for Reconsideration or Clarification of the Commission's *Second Report and Order* in ET Docket No. 05–24, 70 FR 75739, December 21, 2005, submitted on behalf of PDI Communications Systems, Inc. (PDI) and a subsequent Supplement to Petition for Clarification also filed on behalf of PDI in this same matter. In the *Second Report and Order*, the Commission amended its rules to advance to March 1. 2007 the date on which new broadcast television receivers with screen sizes 13–24″ and certain other broadcast TV receiving devices that do not have screens, such as VCRs and video recorders, must include the capability to receive broadcast digital television signals (DTV tuner requirement), and required new receivers with screen sizes smaller than 13″ to incorporate this capability on the same schedule.

2. PDI's request concerns the application of the DTV tuner requirement to new broadcast television receivers with screen sizes less than 13″, and specifically the application of that requirement to a specialized video system PDI manufactures and distributes for use in the healthcare industry. PDI asks that the Commission clarify the rules as adopted in the *Second Report and Order* to state that the DTV tuner requirement does not apply to the viewing units included in specialized video systems such as the PDI system. Alternately, it asks the Commission to modify its rules to provide on a case-by-case basis, waivers for viewing units used in specialized video systems when the application of the rule would not advance the Commission's stated objectives in the *Second Report and Order*.

3. Upon examining PDI's petition, supplemental filing, and the accompanying attachments, the Commission concludes that the viewing units in PDI's video system are television broadcast receivers as defined in Section 15.3(w) of the Commission's rules to which the DTV tuner requirement applies. In this regard, the Commission observes that the petition indicates that the PDI viewing units can be used to receive off-the-air signals. We further observe that the user manuals for the PERSONA 9 and PERSONA 10 viewing unit models specifically indicate that the units' channel setup features are configured to autoprogram for reception of "air" signals. In the broadcast reception mode, the cable providing both program signals and power connects to an antenna through the central system. The design feature by which the off-the-air signals are routed through the central system does not alter the fact that the video units can receive signals off-the-air (and apparently in some instances are used for that purpose).

4. The Commission does not find merit in PDI's argument that requiring its viewing units to include DTV tuners would not advance the Commission's goals in applying that requirement to smaller screen receivers. In the *Second Report and Order*, the Commission stated that, as it observed in first adopting the DTV tuner requirement, consumers must be able to receive digital TV signals for the DTV transition to move forward to a successful completion. To that end, the Commission's goal is to maximize the number of TV receivers on the market, with a final goal that all new television receiver products include a tuner as quickly as possible. While the PDI viewing units are different than most TV receivers with screens smaller than 13″ in that they are designed to receive service from a separate antenna connected through a cable rather than an attached antenna, that does not alter the fact that the PDI units would not be able to receive off-the-air TV signals when analog TV service ends unless they include a DTV tuner.

5. If the PDI viewing units are not able to receive digital TV service after the transition ends, those patients who view off-the-air TV signals on them, as well as the health care providers who own and operate the systems, will lose the benefits of that service. In this regard, the Commission recognizes that when analog TV service ends those PDI systems that are configured with analog only viewing units will not be able to offer off-the-air TV service. Applying the DTV tuner requirement to new viewing units will include the PDI systems in the transition process and minimize the number of viewing units that will need to be replaced when analog service ends. Therefore, the Commission will not exempt viewing units that are included in specialized video systems as described by PDI from the DTV tuner requirement.

6. The Commission also concludes that it would be inconsistent with these goals to establish a process that would provide for favorable treatment of requests for waiver of the DTV tuner requirement for TV receivers used in specialized video systems. As indicated, the Commission believes it is important to ensure that new TV receiver products include DTV reception as soon as possible.

7. The Commission recognizes PDI's position that the process for meeting the safety requirements for equipment used in medical facilities, coupled with PDI's position as a smaller manufacturer, may pose difficulties for PDI in meeting the March 1, 2007 effective date when all new TV receivers must comply with the DTV tuner requirement. In view of these circumstances, and pursuant to PDI's request that the Commission provide for a waiver of the rules in such cases, we find that a limited waiver of the DTV tuner requirement under the provisions of Section 1.3 is warranted to allow PDI additional time to bring the existing models of its viewing units into compliance. In this limited case of receivers used as part of a system intended for use in health care facilities, the Commission finds that providing an additional year for PDI Communications to bring its existing video system viewing unit models into compliance would serve the public interest without otherwise compromising its goals for ensuring that consumers are able to view broadcasters' digital television signals.

8. The Commission therefore denies PDI Communications Systems, Inc.'s requests that it: (1) Determine that the DTV reception requirement in § 15.117(i) of the Commission's rules

does not apply to its video system or (2) modify its rules to provide a waiver procedure by which parties may seek a waiver of the March 1, 2007 effective date of that requirement for monitors used in specialized video systems. The Commission, however, is extending the date on which new units of the PERSONA 9 (Model PDI–P9TV) and PERSONA 10 (Model PDI–P10–LCD) viewing unit components of the PDI video system must comply with the DTV tuner requirement to March 1, 2008. That is, PDI Communications System, Inc. may continue to import and/or ship in interstate commerce units of its PERSONA 9 and PERSONA 10 viewing units that do not include the capability to receive broadcast television signals until February 28, 2008; on March 1, 2008 and thereafter new units of those products that are imported or shipped in interstate commerce must comply with the DTV tuner requirement.

Ordering Clause

9. The Congressional Review Act (CRA) was addressed in the Second Report and Order released by the Commission, November 8, 2005, in "In the Matter of Requirements for Digital Television Receiving Capability, in this proceeding, FCC 05–190, 70 FR 75739, December 21, 2005. This Order does not change any rules it only extends the date on which new units of the PERSONA 9 (Model PDI–P9TV) and PERSONA 10 (Model PDI–P10–LCD) viewing unit components of the PDI video system must comply with the DTV tuner requirement to March 1, 2008.

10. Pursuant to the authority contained in sections 2(a), 4(i) and (j), 7, 151, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i) and (j), 157, 303, and 405, and sections 1.3 and 1.106 of the Commission's rules, 47 CFR 1.3 and 1.106, the Petition for Reconsideration or Clarification submitted by John S. Logan on behalf of PDI Communications, Inc. is denied in part and granted in part.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15067 Filed 9–12–06; 8:45 am]

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Proposed Rules

Federal Register
Vol. 71, No. 177
Wednesday, September 13, 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.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 401

RIN 0960–AE88

Privacy and Disclosure of Official Records and Information

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise our privacy and disclosure rules to clarify certain provisions and to provide expanded regulatory support for new and existing responsibilities and functions. These changes in the regulations will increase Agency efficiency and ensure consistency in the implementation of the Social Security Administration's (SSA) policies and responsibilities under the Privacy Act and the Social Security Act.

DATES: To be sure that your comments are considered, we must receive them no later than November 13, 2006.

ADDRESSES: You may give us your comments by: the Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Christine W. Johnson, Office of Public Disclosure, 3 A–6 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–8563 or TTY (410) 965–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/FR/index.html.* It is also available on the Internet site for the Social Security Administration (e.g., Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf.LawsRegs.*

Background

We last revised the privacy and disclosure regulations in 1980 when the Social Security Administration (SSA) was a part of the Department of Health and Human Services (DHHS) (formerly the Department of Health, Education and Welfare) and subject to DHHS' disclosure policy oversight. Since 1980, significant changes have occurred in the procedures. We propose to codify these changes in the procedures governing access to, and disclosure of, personally identifiable information. We are also proposing to make minor housekeeping changes to further clarify our procedures. In general, the proposed changes reflect SSA's compliance with technological, legal and legislative changes that have occurred since 1980.

Thus, we propose to clarify the provisions regarding requests for access to information developed by medical sources for Social Security programs, fully describe the existing responsibilities and functions of the Privacy Officer position, establish the new senior agency official for privacy as required by the Office of Management and Budget (OMB) and explain the related responsibilities, and implement SSA's new Privacy Impact Assessment process in accordance with the E-Government Act of 2002, Pub. L. 107–347. Further, as required by OMB, we propose to require adequate safeguards against inappropriate disclosure of personal information by electronic means, e.g., over the Internet, and revise our procedures on notification of, or access to, medical records on behalf of another person, e.g., an adult or child.

These proposed rules would also clarify SSA's policy concerning an individual's access to, or notification of, program records, amend the language concerning appeal requests under the Privacy Act to include denial of access to the record, and amend the language to insert the word "written" prior to "consent" to clarify that the requirement means disclosure with written consent and expand the language to more clearly define what information we will disclose with written consent. Further, we propose to revise the language to show that SSA also has physical custody of personnel records, and revise the language under disclosure of personal information in nonprogram records to show the new name of the former General Accounting Office.

These proposed rules would also amend the language under disclosure of personal information in program records to make clear that we disclose information from program records only when there is a legitimate need for the information, and revise the language under disclosures required by law to show the current name for Aid to Families with Dependent Children. We also propose to amend the language under compatible purposes to clearly state how we implement the routine use provision of the Privacy Act (5 U.S.C. 552a(b)(3)) and what we mean by routine use in terms of the information we can disclose, and amend the language under law enforcement purposes to clarify that disclosures under 5 U.S.C. 552a(b)(7) also require a written request. Further, we propose to amend the language under statistical and research activities to reflect the language in the new routine use of data for research purposes, amend the language in the General Accounting Office section to correctly reflect the new name of the agency, and clarify certain matters related to our rules on disclosure under court order and other legal process.

Explanation of Changes

Section 401.20 Scope

We propose to amend the section heading in § 401.20(a) to read "Access" and to amend paragraph (a) to clarify the rules regarding the access provision as it pertains to information developed by medical sources that perform consultative examinations for us. We also propose to amend the heading in § 401.20(b)(1)(iii) to read "Records kept by medical sources," and amend the language in that paragraph.

Section 401.30 Privacy Act Responsibilities

We propose to add new paragraphs (d), (e) and (f) to § 401.30.

Privacy Officer

New § 401.30(d) will fully describe the position of the SSA Privacy Officer and the responsibilities and functions of that position. SSA has always had a designated Privacy Officer since the enactment of the Privacy Act in 1974. Since that time, the Privacy Officer has overall responsibility for coordination of SSA privacy matters within the Agency. As such, the Privacy Officer advises the Agency on privacy policy matters and is responsible for developing and implementing privacy policies and related requirements, ensures compliance with the Privacy Act, and provides general oversight of privacy and disclosure policy involving privacy and disclosure matters. The Privacy Officer has other responsibilities including evaluating legislative proposals and other initiatives proposed by Congress, other agencies and the public, and reviewing multifunctional projects, studies and research activities involving personal information. The responsibilities also include facilitating the incorporation of privacy principles into information technology systems architectures and technical designs to ensure that privacy policies and practices are properly reflected in our business requirements.

We are proposing to provide an explanation of the Privacy Officer's responsibilities to emphasize SSA's long-standing commitment to the public that personal information maintained in SSA's Privacy Act systems of records is handled in full compliance with the law.

Senior Agency Official for Privacy

To help protect the privacy rights of Americans and to ensure that agencies continue to have effective information privacy management programs in place to carry out this important responsibility, OMB requires that each agency designate a senior agency official to serve as the person in charge of privacy issues.

The Senior Agency Official for Privacy will have overall responsibility and accountability for privacy issues at the national and agency-wide levels. The official will also have a central role in overseeing agency compliance efforts in privacy policy procedures as well as a key role in policy-making as it pertains to the development and evaluation of legislative, regulatory and other policy proposals that might implicate privacy issues.

New § 401.30(e) will establish SSA's Senior Agency Official for Privacy and fully describe the responsibilities of that position as prescribed by OMB. (See OMB Memorandum M–08–05, dated February 11, 2005).

Privacy Impact Assessments

In accordance with Section 208 of the E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch. 36), the Office of Management and Budget now requires that certain Information Technology (IT) projects receive a special privacy review called a Privacy Impact Assessment (PIA). The PIA review is in addition to the current SSA requirement that SSA's Privacy Officer certify Agency procurement requests for automated data processing resources and proposed contracts. The PIA review will strengthen the existing process by incorporating privacy involvement directly into the development of the IT system lifecycle and establishing a process that the entire Agency can understand in terms of privacy involvement in IT system development efforts.

New § 401.30(f) will describe the PIA requirements for ensuring that privacy considerations receive a standardized review. We will determine if adequate measures have been taken to protect the privacy of the personally identifiable information the IT project will affect and if the requirements of the Privacy Act and applicable SSA regulations and policy are properly addressed.

Section 401.45 Verifying Your Identity

We propose to add to § 401.45 new paragraphs (b)(3) and (b)(4) to emphasize that when SSA provides convenient service to you over open computer networks such as the Internet, we will adequately protect against improper disclosure of records. We will redesignate present paragraphs (b)(3), (b)(4) and (b)(5) as (b)(5), (b)(6) and (b)(7), respectively. We will also revise the language in redesignated (b)(5).

Increasingly, computer technology enables us to transact business with you as a taxpayer, Social Security beneficiary, employer or third-party organization. We will move cautiously to allow you to communicate with us securely over open networks such as the Internet. Such expanded services are dependent on our development of practices and mechanisms to ensure identity confirmation to protect you against improper disclosure of the personal information we maintain in our records, and to improve privacy protections.

Section 401.55 Special Procedures for Notification of or Access to Medical Records

We propose to revise the section heading to read "Access to medical records." We also propose to revise the procedures for access to medical records to conform to the practices and systems of records that set out special procedures under which individuals may have direct access to their medical records.

Currently, when you request your medical records, § 401.55(b)(1)(ii) requires you to designate a representative to receive the records for you and gives the representative the discretion to inform you about the contents of your record. We propose to modify the special procedures in that paragraph to require the representative to release your record to you after the discussion of its contents. The representative no longer has the discretion to withhold any part of your record.

Section 401.55(c)(2)(iii) currently gives a designated representative (e.g., family physician or other health care professional) discretion about making the contents of a minor's medical record available to the parent or legal guardian. The proposed rule would modify this provision to require the representative to release the minor's records to the parent or legal guardian following the discussion of its contents. Additionally, we are redesignating present paragraph (d) concerning requests on behalf of incapacitated adults as paragraph (c)(3).

Section 401.60 Access or Notification of Program Records About Two or More Individuals

Currently, § 401.60 is entitled "Access or notification of program records about two or more individuals." The first sentence in the section reads "When information about two or more individuals is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record." We propose to amend § 401.60 by inserting the word "to" after the word "Access" in the heading and revising the language in both the heading and first sentence to read "about more than one individual."

Section 401.70 Appeals of Refusals to Correct or Amend Records

Currently, § 401.70 is entitled "Appeals of refusals to correct or amend records." We propose to amend the section heading to include appeals after denial of access. We also propose to

clarify the policy in the section by revising the language in existing paragraphs (a), (b) and (c). Further, we propose to add a new paragraph (d) to clearly explain the process after you file your appeal.

Section 401.100 Disclosure of Records With the Consent of the Subject of the Record

We propose to amend the language in the section heading under § 401.100 to insert the word "written" before "consent." We also propose to revise the language in paragraph (a) to clarify that the consent must be in writing and define what information we will disclose with written consent. To present the information in a more reader-friendly format, the second and third sentences of paragraph (a) will be designated as new paragraphs (b) "Disclosure with written consent", and (c) "Disclosure of the entire record," respectively. We propose to make conforming changes to existing paragraph (b) and redesignate it as paragraph (d).

Section 401.105 Disclosure of Personal Information Without the Consent of the Subject of the Record

We propose to revise the second sentence of paragraph (b) into two sentences to clarify that SSA also has physical custody of personnel records maintained as part of the Office of Personnel Management's (OPM) Privacy Act government-wide systems of records and that these records are subject to OPM's rules on access and disclosure at 5 CFR parts 293 and 297.

Section 401.110 Disclosure of Personal Information in Nonprogram Records Without the Consent of the Subject of the Record

We propose to amend the language in § 401.110 (j) to show the new name for the former General Accounting Office.

Section 401.115 Disclosure of Personal Information in Program Records Without the Consent of the Subject of the Record

We propose to amend the introductory language in § 401.115 to make clear that the information in program records will be disclosed only on a need-to-know basis.

Section 401.120 Disclosure Required by Law

Currently, the last sentence in § 401.120 reads "* * * and to Federal, State and local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs." We propose to amend the language to reflect the current name of the AFDC program. The new name will read "* * * Temporary Assistance for Needy Families * * *."

Section 401.150 Compatible Purposes

We propose to amend § 401.150 to clearly state how we implement the routine use provision. More specifically, the language in paragraphs (a) and (b) will be expanded to include what we mean by "routine use" in terms of the information we can disclose and how we give notice of routine use disclosures, respectively. We will amend paragraph (c) by adding new paragraphs (c)(1) and (c)(2) to clearly show the distinctions between disclosure in SSA programs and programs similar to SSA programs, for compatibility purposes.

Section 401.155 Law Enforcement Purposes

We propose to amend § 401.155 to make clear that the Privacy Act requires a written request for information from the head of the law enforcement agency in situations involving both serious crimes and criminal activity involving Social Security programs or other programs with the same purpose.

Section 401.165 Statistical and Research Activities

We propose to amend § 401.165 to make it consistent with the recently published new routine use of data for research purposes.

Section 401.175 General Accounting Office

We propose to amend the section heading in § 401.175 to reflect a name change. The new heading will read "Government Accountability Office." We also propose to revise the language in the paragraph to read "* * * to the Government Accountability Office when that agency needs the information to carry out its duties."

Section 401.180 Courts

We propose to revise the entire section of § 401.180 to clarify our policy on disclosure when we receive an order from a court of competent jurisdiction.

In 1980, when § 401.180 was initially published as a final rule, the status of subpoenas and other legal process under paragraph (b)(11) of the statute was unclear. Since then, SSA has not treated a subpoena or similar legal process as a court order unless a judge signs it. We believe that this position is now established as law as it is consistent with court decisions and OMB guidance interpreting the Privacy Act. See, e.g., *Doe* v. *DiGenova*, 779 F.2d 74 (D.C. Cir. 1985); *Stiles* v. *Atlanta Gas Light Co.*, 453 F.Supp. 798 (N.D. Ga. 1978).

Therefore, we propose to revise § 401.180 as follows: In paragraph (a) we will make clear that when information disclosed from SSA records is used in court proceedings, it usually becomes part of the public record of the proceedings and its confidentiality often cannot be protected. Accordingly, we will follow the rules in new paragraph (d) of this section in deciding whether an order is from a court of competent jurisdiction.

We propose to change the heading in paragraph (b) to read "Court" and amend the language in the paragraph to state SSA's position that a court, for purposes of 5 U.S.C. § 552a(b)(11), is an institution of a judicial branch of government consisting of one or more judges who seek to adjudicate disputes and administer justice. The definition clarifies that other entities in other branches of government or not in the United States are not courts for purposes of the Privacy Act.

We propose to add a new paragraph (c) to explain that only a legal process, such as a summons or warrant, that is signed by a judge and that commands the disclosure of information by SSA will be considered to be a court order for purposes of the statutory exception in 5 U.S.C. § 552a(b)(11). References to subpoenas would be removed from this regulation.

When we receive legal process that is not an order of a court of competent jurisdiction, (such as a grand jury subpoena, a subpoena signed by the clerk of the court or the attorney representing a party to the proceeding), we may decide to disclose information if the conditions described in any other provision of this regulation would permit the disclosure (for example, for a compatible purpose under § 401.150). However, we will not disclose without an order from a court of competent jurisdiction if the Privacy Act or any other law would prohibit the disclosure without such an order. We will also add a new paragraph (d) to explain our view on court of competent jurisdiction.

In new paragraph (e) we propose to describe the conditions for disclosure under court order and clarify the rules on disclosure when a court order is involved.

We propose to add a new paragraph (f) to explain that in other circumstances we may attempt to satisfy the needs of a court of competent jurisdiction when the circumstances in paragraph (e) are not met. We will make these determinations in accordance with § 401.140.

We propose to add new paragraph (g) to explain that we will treat a state criminal court as a court of competent jurisdiction in the limited circumstance when a disclosure is necessary to preserve the rights of an accused individual to due process in a criminal proceeding. We view that extending this exception to a state court hearing criminal matters does not in any way waive sovereign immunity. We are including this provision to clarify SSA's position that SSA should balance an individual's constitutional right to due process while preserving the confidentiality of information. SSA will disclose information when it believes the due process right outweighs the need to preserve confidentiality. We expect the court order to include language articulating the due process need for the information.

Further, we propose to add a new paragraph (h) to provide a cross-reference to additional regulations contained in 20 CFR part 403 concerning testimony and production of records in legal proceedings.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
401.45(b)	20,000	1	10	3333
401.70(a), (b)				1
401.100(b)				1
Total	20,000	1	10	3335

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

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

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

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

List of Subjects in 20 CFR Part 401

Information, Records, Administrative practice and procedure, Archives and records.

Dated: September 5, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are proposing to amend subparts A, B and C of part 401 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

2. Section 401.20 is amended by revising paragraphs (a) and (b)(1)(iii) to read as follows:

§ 401.20 Scope.

(a) *Access.* Sections 401.30 through 401.95, which set out SSA's rules for implementing the Privacy Act, apply to records retrieved by an individual's name or personal identifier subject to the Privacy Act. The rules in §§ 401.30 through 401.95 also apply to information developed by medical sources for the Social Security program and shall not be accessed except as permitted by this part.

(b) * * *

(1) * * *

(iii) *Records kept by medical sources.* Information retained by medical sources pertaining to a consultative examination performed for the Social Security program shall not be disclosed except as permitted by this part.

* * * * *

3. Section 401.30 is amended by adding paragraphs (d), (e) and (f) to read as follows:

§ 401.30 Privacy Act responsibilities.

* * * * *

(d) *Privacy Officer.* The Privacy Officer is an advisor to the Agency on all privacy policy and disclosure matters. The Privacy Officer coordinates the development and implementation of Agency privacy policies and related legal requirements to ensure Privacy Act compliance, and monitors the coordination, collection, maintenance, use and disclosure of personal information. The Privacy Officer also ensures the integration of privacy principles into information technology systems architecture and technical designs, and generally provides to Agency officials policy guidance and directives in carrying out the privacy and disclosure policy.

(e) *Senior Agency Official for Privacy.* The Senior Agency Official for Privacy assumes overall responsibility and accountability for ensuring the agency's implementation of information privacy protections as well as agency compliance with Federal laws, regulations, and policies relating to the privacy of information, such as the Privacy Act. The compliance efforts also include reviewing information privacy procedures to ensure that they are comprehensive and up-to-date and, where additional or revised procedures may be called for, working with the relevant agency offices in the consideration, adoption, and implementation of such procedures. The official also ensures that agency employees and contractors receive appropriate training and education programs regarding the information privacy laws, regulations, polices and procedures governing the agency's handling of personal information. In addition to the compliance role, the official will have a central policy-making role in the agency's development and evaluation of legislative, regulatory and other policy proposals which might implicate information privacy issues, including those relating to the collection, use, sharing, and disclosure of personal information.

(f) *Privacy Impact Assessment.* In our comprehensive Privacy Impact Assessment (PIA) review process, we incorporate the tenets of privacy law, SSA privacy regulations, and privacy policy directly into the development of certain Information Technology projects. Our review examines the risks and ramifications of collecting, maintaining and disseminating information in identifiable form in an electronic information system and identifies and evaluates protections and alternate processes to reduce the risk of unauthorized disclosures. As we accomplish the PIA review, we ask systems personnel and program personnel to resolve questions on data needs and data protection prior to the development of the electronic system.

4. Section 401.45 is amended by redesignating paragraphs (b)(3), (b)(4) and (b)(5) as (b)(5), (b)(6) and (b)(7), respectively, adding new paragraphs (b)(3) and (b)(4) and revising redesignated paragraph (b)(5) to read as follows:

§ 401.45 Verifying your identity.

* * * * *

(b) * * *

(3) *Electronic requests.* If you make a request by computer or other electronic means, e.g., over the Internet, we require you to verify your identity by using identity confirmation procedures that are commensurate with the sensitivity of the information that you are requesting. If we cannot confirm your identity using our identity confirmation procedures, we will not process the electronic request. When you cannot verify your identity through our procedures, we will require you to submit your request in writing.

(4) *Electronic disclosures.* When we collect or provide personally identifiable information over open networks such as the Internet, we use encryption in all of our automated online transaction systems to protect the confidentiality of the information. When we provide an online access option, such as a standard e-mail comment form on our Web site, and encryption is not being used, we alert you that personally identifiable information (such as your social security number) should not be included in your message.

(5) *Requests not made in person.* Except as provided in paragraphs (b)(2) of this section, if you do not make a request in person, you must submit a written request to SSA to verify your identify or you must certify in your request that you are the individual you claim to be. You must also sign a statement that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

* * * * *

5. Section 401.55 is amended by revising paragraphs (a), (b)(1)(ii), (c)(1) and (c)(2)(iii) and by redesignating paragraph (d) as paragraph (c)(3) to read as follows:

§ 401.55 Access to medical records.

(a) *General.* You have a right to access your medical records, including any psychological information that we maintain.

(b) * * *

(1) * * *

(ii) When you request medical information about yourself, you must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual who will be willing to review the record and inform you of its contents. Following the discussion, you are entitled to your records. The representative does not have the discretion to withhold any part of your record. If you do not designate a representative, we may decline to release the requested information. In some cases, it may be possible to release medical information directly to you rather than to your representative.

* * * * *

(c) *Medical records of minors*—(1) *Request by the minor.* You may request access to your own medical records in accordance with paragraph (b) of this section.

(2) *Request on a minor/s behalf.*

* * *

(iii) Where a medical record on the minor exists, we will in all cases send it to the physician or health professional designated by the parent or guardian. The representative will review the record, discuss its contents with the parent or legal guardian, then release the entire record to the parent or legal guardian. The representative does not have the discretion to withhold any part of the minor's record. We will respond in the following similar manner to the parent or guardian making the request:

We have completed processing your request for notification of or access to _____'s (Name of minor) medical records. Please be informed that if any medical record was found pertaining to that individual, it has been sent to your designated physician or health professional.

* * * * *

6. Section 401.60 is amended by revising the section heading and first sentence of the paragraph to read as follows:

§ 401.60 Access to or notification of program records about more than one individual.

When information about more than one individual is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record. * * *

7. Section 401.70 is revised to read as follows:

§ 401.70 Appeals of refusals to correct records or refusals to allow access to records.

(a) *General.* This section describes how to appeal decisions made by SSA under the Privacy Act concerning your request for correction of or access to your records, those of your minor child or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the Freedom of Information Act (see part 402 of this chapter). To appeal a decision under this section, your request must be in writing.

(b) *Appeal of refusal to correct or amend records.* If we deny your request

to correct an SSA record, you may request a review of that decision. As discussed in § 401.65(e), our letter denying your request will tell you to whom to write.

(1) We will review your request within 30 working days from the date of the receipt. However, for a good reason and with the approval of the Executive Director for the Office of Public Disclosure, this time limit may be extended up to an additional 30 days. In that case, we will notify you about the delay, the reason for it and the date when the review is expected to be completed.

(2) If, after review, we determine that the record should be corrected, we will do so. However, if we refuse to amend the record as you requested, we will inform you that—

(i) Your request has been refused and the reason for refusing;

(ii) The refusal is SSA's final decision; and

(iii) You have a right to seek court review of SSA's final decision.

(3) We will also inform you that you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record. Also, we will provide a copy of your statement to individuals whom we are aware received the record previously.

(c) *Appeals after denial of access.* If, under the Privacy Act, we deny your request for access to your own record, those of your minor child or those of a person to whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision and your right to appeal that decision. You may appeal the denial decision to the Executive Director for the Office of Public Disclosure, 6401 Security Boulevard, Baltimore, MD 21235–6401, within 30 days after you receive notice denying all or part of your request, or, if later, within 30 days after you receive materials sent to you in partial compliance with your request.

(d) *Filing your appeal.* If you file an appeal, the Executive Director or his or her designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. The time limit for making our decision after we receive your appeal is 30 working days. The Executive Director or his or her designee may extend this time limit up to 30 additional working days if one of the circumstances in 20 CFR 402.140 is met. We will notify you in writing of any extension, the reason for the extension and the date by which we will decide your appeal. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of our decision.

8. Section 401.100 is revised to read as follows:

§ 401.100 Disclosure of records with the written consent of the subject of the record.

(a) *General.* Except as permitted by the Privacy Act and the regulations in this chapter, or when required by the FOIA, we will not disclose your records without your written consent.

(b) *Disclosure with written consent.* The written consent must clearly specify to whom the information may be disclosed, the information you want us to disclose (e.g., social security number, date and place of birth, monthly Social Security benefit amount, date of entitlement), and, where applicable, during which time frame the information may be disclosed (e.g., during the school year, while the subject individual is out of the country, whenever the subject individual is receiving specific services).

(c) *Disclosure of the entire record.* We will not disclose your entire record. For example, we will not honor a blanket consent for all information in a system of records or any other record consisting of a variety of data elements. We will disclose only the information you specify in the consent. We will verify your identity and where applicable (e.g., where you consent to disclosure of a record to a specific individual), the identity of the individual to whom the record is to be disclosed.

(d) A parent or guardian of a minor is not authorized to give written consent to a disclosure of a minor's medical record. See § 401.55 (c)(2) for the procedures for disclosure of or access to medical records of minors.

9. Section 401.105 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 401.105 Disclosure of personal information without the consent of the subject of the record.

* * * * *

(b) * * * For administrative and personnel records, we apply the Privacy Act restrictions on disclosure. To the extent that SSA has physical custody of personnel records maintained as part of the Office of Personnel Management's (OPM) Privacy Act government-wide systems of records, these records are subject to OPM's rules on access and disclosure at 5 CFR parts 293 and 297.

* * *

10. Paragraph (j) of § 401.110 is revised to read as follows:

§ 401.110 Disclosure of personal information in nonprogram records without the consent of the subject of the record.

* * * * *

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of duties of the Government Accountability Office.

* * * * *

11. Section 401.115 is amended by revising the introductory text to read as follows:

§ 401.115 Disclosure of personal information in program records without the consent of the subject of the record.

This section describes how various laws control the disclosure or confidentiality of personal information that we keep. We disclose information in the program records only when a legitimate need exists. For example, we disclose information to officers and employees of SSA who have a need for the record in the performance of their duties. We also must consider the laws identified below in the respective order when we disclose program information:

* * * * *

12. Section 401.120 is amended by revising the last sentence in the paragraph to read as follows:

§ 401.120 Disclosures required by law.

* * * These agencies include the Department of Veterans Affairs for its benefit programs, U.S. Citizenship and Immigration Services to carry out its duties regarding aliens, the Railroad Retirement Board for its benefit programs, and to Federal, State and local agencies administering Temporary Assistance for Needy Families, Medicaid, unemployment compensation, food stamps, and other programs.

13. Section 401.150 is revised to read as follows:

§ 401.150 Compatible purposes.

(a) *General.* The Privacy Act allows us to disclose information without your consent to any other party for routine uses. "Routine use" means that your information can be disclosed for use in any program that is compatible with the purpose for which SSA collected the information.

(b) *Notice of routine use disclosures.* A list of permissible routine use disclosures is included in every system of records notice published in the **Federal Register**.

(c) *Determining compatibility*—(1) *Disclosure to carry out SSA programs.*

We disclose information for routine uses where necessary to carry out SSA's programs.

(2) *Disclosure to carry out programs similar to SSA programs.* We disclose information for routine uses in the administration of other government programs that have the same purposes as SSA programs and meet the following conditions:

(i) The program is clearly identifiable as a Federal, State, or local government program.

(ii) The information requested concerns eligibility, benefit amounts, or other matters of benefit status in a Social Security program and is relevant to determining the same matters in the other program. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Department of Veterans Affairs for its benefit programs, to worker's compensation programs, to State general assistance programs and to other income maintenance programs at all levels of government. We also disclose for health maintenance programs like Medicaid and Medicare.

(iii) In appropriate cases, we will disclose information for use in epidemiological and similar research.

14. Section 401.155 is amended by adding a sentence between the fourth and fifth sentences in paragraph (a) and by removing the last sentence of paragraph (b).

§ 401.155 Law enforcement purposes.

(a) *General.* * * * The Privacy Act allows us to disclose information if the head of the law enforcement agency makes a written request giving enough information to show that the conditions in paragraphs (b) or (c) of this section are met, what information is needed, and why it is needed. * * *

* * * * *

15. Section 401.165 is amended by revising paragraph (b)(2) to read as follows:

§ 401.165 Statistical and research activities.

* * * * *

(b) * * *

(2) The activity is designed to increase knowledge about present or alternative Social Security programs or other Federal or State income-maintenance or health-maintenance programs; or is used for research that is of importance to the Social Security program or the Social Security beneficiaries; or an epidemiological research project that relates to the Social Security program or beneficiaries; and

* * * * *

16. Section 401.175 is revised to read as follows:

§ 401.175 Government Accountability Office.

We disclose information to the Government Accountability Office when that agency needs the information to carry out its duties.

17. Section 401.180 is revised to read as follows:

§ 401.180 Disclosure under court order or other legal process.

(a) *General.* The Privacy Act permits us to disclose information when we are ordered to do so by a court of competent jurisdiction. When information is used in a court proceeding, it usually becomes part of the public record of the proceeding and its confidentiality often cannot be protected in that record. Much of the information that we collect and maintain in our records on individuals is especially sensitive. Therefore, we follow the rules in paragraph (d) of this section in deciding whether we may disclose information in response to an order from a court of competent jurisdiction. When we disclose pursuant to an order from a court of competent jurisdiction, and the order is a matter of public record, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

(b) *Court.* For purposes of this section, a court is an institution of a judicial branch of government within the United States consisting of one or more judges who seek to adjudicate disputes and administer justice. Entities not in the judicial branch of government within the United States are not courts for purposes of this section.

(c) *Court order.* For purposes of this section, a court order is any legal process which satisfies all of the following conditions:

(1) It is issued under the authority of a court;

(2) A judge of that court signs it;

(3) It commands SSA to disclose information; and

(4) The court is a court of competent jurisdiction.

(d) *Court of competent jurisdiction.* It is the view of SSA that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, SSA will not honor state court orders as an independent basis for disclosure except in the circumstances described in paragraph (g) of this section. Other state court orders will be treated in accordance with the other provisions of this part.

(e) *Conditions for disclosure under a court order of competent jurisdiction.* We disclose information in compliance with an order of a court of competent jurisdiction if —

(1) Another section of this part specifically allows such disclosure, or

(2) SSA, the Commissioner of Social Security, or any officer or employee of SSA in his or her official capacity is properly a party in the proceeding, or

(3) Disclosure of the information is necessary to ensure that an individual who is accused of criminal activity receives due process of law in a criminal proceeding.

(f) *In other circumstances.* We may disclose information to a court of competent jurisdiction in circumstances other than those stated in paragraph (e) of this section. We will make our decision regarding disclosure by balancing the needs of a court while preserving the confidentiality of information. For example, we may disclose information under a court order that restricts the use and redisclosure of the information by the participants in the proceeding; we may offer the information for inspection by the court *in camera* and under seal; or we may arrange for the court to exclude information identifying individuals from that portion of the record of the proceedings that is available to the public. We will make these determinations in accordance with section 401.140.

(g) *Conditions for disclosure under state court orders.* We may disclose information in compliance with a state court order only if the disclosure is necessary to preserve the rights of an accused to due process in a criminal proceeding. We will make our decision regarding disclosure by balancing the needs of a state court while preserving the confidentiality of information.

(h) *Other regulations on request for testimony, subpoenas and production of records in legal proceedings.* See 20 CFR part 403 of this chapter for additional rules covering disclosure of information and records governed by this part and requested in connection with legal proceedings.

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DEPARTMENT OF STATE

22 CFR Part 99

[Public Notice 5539]

RIN: 1400–AC–20

Intercountry Adoption—Reporting on Non-Convention and Convention Adoptions of Emigrating Children

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department), with the joint review and approval of the Department of Homeland Security (DHS), is proposing a new rule to implement the requirement in the Intercountry Adoption Act of 2000 (the IAA) to establish a Case Registry for, *inter alia*, emigrating children. This proposed rule would impose reporting requirements on adoption service providers, including governmental authorities who provide adoption services, in cases involving adoptions of children who will emigrate from the United States. These reporting obligations apply to all intercountry adoptions, regardless of whether they are covered under the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention). This proposed rule, although issued with the joint review and approval of DHS pursuant to section 303(d) of the IAA, only adds a new section to the Department's Convention regulations; no amendments or additions are made to DHS regulations.

DATES: Comments must be received on or before November 13, 2006.

ADDRESSES: You may submit comments, identified by docket number State/AR–01/99, by one of the following methods (no duplicates, please):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Electronically*: You may submit electronic comments to *adoptionregs@state.gov*. Attachments must be in Microsoft Word.
- *Mail:* U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA–29), 2201 C Street, NW., Washington, DC 20520.
- *Courier:* U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA–29), 2201 C Street, NW., Washington, DC 20520. (Because access to the Department of State is not readily available to private individuals without Federal Government identification, do not personally deliver comments to the Department).

Docket: Comments received before the close of the comment period will be available to the public, including any personally identifiable information that is included in a comment. The Department posts comments on its public Web site at: *http://travel.state.gov* or they are available for public inspection by calling Delilia Gibson-Martin at 202–736–9105 for an appointment.

FOR FURTHER INFORMATION CONTACT: Anna Mary Coburn at 202–736–9081. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)), 32 I.L.M. 1134 (1993); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

II. Introduction

The Convention is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country that is a party to the Convention by persons habitually resident in another country that is also a party to the Convention. The Convention establishes procedures to be followed in these intercountry adoption cases and imposes safeguards to protect the best interests of children. It applies to the United States as both a country of origin (outgoing cases, *i.e.*, where children are emigrating from the United States to a foreign country) and a receiving country (incoming cases, *i.e.*, where children are immigrating to the United States from a foreign country).

The implementing legislation for the Convention is the IAA. The IAA requires the Department and DHS to establish a Case Registry to track all intercountry adoption cases: Convention and non-Convention; emigrating and immigrating cases. It also requires the Department to report certain information about intercountry adoptions to Congress. To implement these responsibilities, the Department is, with the joint review and approval of DHS, promulgating this proposed rule to require adoption service providers who provide adoption services in intercountry adoption cases involving a child emigrating from the United States (including governmental authorities who provide such adoption services) to report certain information to the Department for incorporation into the Case Registry. These requirements would apply in both Convention and non-Convention cases involving emigrating children. No regulation is being proposed at this time to establish reporting requirements in cases involving children immigrating to the United States (incoming cases), because sufficient information can be collected through other means, primarily the DHS petition process and the immigration visa and issuance process.

Separate regulations implement other aspects of the Convention and the IAA, such as regulations on the accreditation/approval of adoption service providers (ASPs) to perform adoption services in cases covered by the Convention (22 CFR part 96), preservation of Convention records (22 CFR part 98), visa procedures for Convention adoption cases involving immigrating children (regulations to appear at 22 CFR part 42), and certification of Convention adoption proceedings done by U.S. courts (regulations to appear at 22 CFR part 97). Further background on the Convention and the IAA is provided in the Preamble to the Final Rule on the Accreditation and Approval of Agencies and Persons under the IAA, Section I and II, 71 FR 8064–8066 (February 15, 2006) and the Preamble to the Proposed Rule on the Accreditation of Agencies and Approval of Persons under the IAA, Section III and IV, 68 FR 54065–54073 (September 15, 2003).

III. The Proposed Rule

This proposed rule establishes reporting requirements for all intercountry adoption cases in which a child is emigrating from the United States. There are three IAA sections relevant to the development of this proposed rule. Section 102(e) of the IAA requires the Department and DHS to establish a Case Registry of all adoptions involving the immigration of children to the United States and emigration of children from the United States regardless of whether the adoption occurs under the Convention. This Case Registry must permit tracking of pending cases and retrieval of information on both pending and closed cases. (As noted previously, this proposed regulation addresses only emigrating (outgoing) cases, and not immigrating (incoming) cases, because the Department can obtain sufficient data on immigrating cases through other means.) Section 303(d) of the IAA requires all adoption service providers, including governmental authorities, who provide adoption services in outgoing cases not subject to the Convention, to file information required under regulations issued to implement

the Case Registry. In addition, section 104 of the IAA requires the Department to submit annual reports to Congress on all intercountry adoptions, which must set forth, among other items, the total number of Convention and non-Convention outgoing cases, the country to which each child immigrated, and the State from which each child emigrated. In summary, these three sections of the IAA—section 102(a) (establishment of Case Registry), section 303(d)(filing with Case Registry regarding non-Convention adoptions), and section 104(b)(2) (annual reports to Congress)'provide the Department with the legal authority to collect the data outlined in the proposed rule.

Although the main purpose of the IAA was to implement the Convention, Congress also sought to gather case-specific data on intercountry adoptions. Historically, children involved in outgoing cases did not require adoption-specific Federal services in connection with their departure from the United States and therefore were not identified as such to the Federal government. As noted, in the IAA, Congress mandated the creation of Case Registry to monitor all intercountry adoption cases, including both Convention and non-Convention outgoing cases. The House Committee on International Relations stated in its report on the IAA that "[T]his registry shall be for the purpose of easing administration of [the IAA] and the Convention so that Federal agencies and prospective adoptive parents can determine the status of a particular case and for the purpose of creating a system to track children who leave the United States to be adopted abroad." (Report of the House Committee on International Relations on the Intercountry Adoption Act, 106th Cong. 2nd Sess., H.R. Rep. No 106–691 (2000)). With this legislative history and the resulting statutory language in mind, the Department has devised a rule that requires reporting of certain case-specific information both to permit tracking and retrieval of information on outgoing cases and to enable the Department to complete its annual reports to Congress. The proposed rule is narrowly crafted to include only those basic items necessary to fulfill these case tracking and reporting functions. Moreover, in the interest of increasing compliance, we have attempted to keep the requirements simple and the number of items to be reported very limited.

Reporting Information on Convention and Non-Convention Outgoing Cases

Section 99.1 of the proposed regulation defines the term "Convention" and adopts by reference all other definitions established in 22 CFR 96.2 (Hague accreditation and approval regulation). Section 99.2 of the proposed regulation sets forth the reporting requirements for providers of adoption services in outgoing (emigrating child) adoptions. Note that the term "adoption services" is a defined term in 22 CFR 96.2 and refers to the following six services: (1) Identifying a child for adoption and arranging an adoption; (2) securing the necessary consent to termination of parental rights and to adoption; (3) performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study; (4) making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child; (5) monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; (6) when necessary because of disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement. Post-adoption services are not included within the definition of "adoption services."

Who Must Report?

Section 99.2(a) makes clear that any entity that provides adoption services will be required to report under this rule if it is a "reporting provider" in the case, as identified in § 99.2(b). This means that all agencies (whether or not accredited or temporarily accredited), all persons (whether or not approved), all public domestic authorities (a defined term in 22 CFR 96.2 which means an authority operated by a State, local, or tribal government within the United States), and any other providers of adoption services in outgoing adoption cases are potentially required to report under this regulation. To avoid duplicative reporting, and to reduce the burden on all adoption service providers, including public domestic authorities, § 99.2(b) establishes a framework for determining which provider must report in a given case as follows:

Convention cases. In an outgoing Convention adoption case involving at least one accredited, temporarily accredited, or approved provider, it is the primary provider, as described in 22 CFR 96.14(a) that must report. In an outgoing Convention adoption in which there is no accredited, temporarily accredited, or approved provider involved, the public domestic authority performing adoption services in the case must report.

Non-Convention cases. In an outgoing non-Convention adoption case, in which there is only one provider of adoption services, that provider must report. As noted above, this provider might be an agency (including an accredited agency or temporarily accredited agency), a person (including an approved person), a public domestic authority, or any other adoption service provider. In cases in which there are two or more providers of adoption services, the reporting provider is the provider that is responsible for child placement as determined by applying factors listed in § 99.2. When multiple providers are involved in a non-Convention case, each provider must use the factors in § 99.2 of the proposed rule to identify whether it is the provider with child placement responsibility and therefore must report the information listed in § 99.2(c) and (d). The language in § 99.2(b)(1) through (4) is similar to the language in 22 CFR 96.14 on how to determine who is the primary provider; however, it has been adapted slightly to replace Convention specific terminology with language appropriate to non-Convention cases.

This proposed rule does not require prospective adoptive parent(s) who are acting on their own behalf, as described in 22 CFR 96.13(d), to report information to the Department, even if they perform adoption services for themselves in an outgoing case. The Department is not including prospective adoptive parent(s) acting on their own behalf as potential reporters because, although they may perform adoption services on their own behalf, they are not providing adoption services to others, and thus section 303(d) of the IAA would not require them to report data to the Department. The Department believes that very few if any outgoing Convention adoption cases will be accomplished entirely by prospective adoptive parent(s) acting alone, since the requirements that must be met to achieve IAA and Convention compliance, as set forth in 22 CFR 97.3, will require the use of an adoption service provider. We also believe that, given the complexity of outgoing intercountry adoptions and the standard requirement of an independent home study, the number of non-Convention cases where there is no adoption service provider at all will be quite limited as well.

What Information Must Be Reported?

Section 99.2(c) and (d) lists the case-specific information that must be reported to the Department. The

Department has limited the data items to the minimum amount of information it believes necessary to carry out its statutory duties. The regulation divides required reporting into two basic categories: Identifying information that must be reported within 30 days of learning that the case involves emigration of a child from the United States to a foreign country, set forth in § 99.2(c), and milestone information as well as changes to information previously provided that must be reported within 30 days of occurrence, as set forth in § 99.2(d).

In accordance with § 99.2(c), the reporting provider, as identified in § 99.2(b), must provide the following identifying information to the Department within 30 days of learning a case involves emigration of a child from the United States to a foreign country:

- The name, date of birth of child, and place of birth of child;
- The U.S. state from which the child is emigrating;
- The foreign country to which the child is immigrating;
- The U.S state where the final adoption is taking place, or alternatively, the U.S. State where legal custody for the purpose of adoption is being granted and the foreign country where the final adoption will take place; and
- The name, address, phone number, and other contact information for the reporting provider.

In addition, in accordance with § 99.2(d), the reporting provider must provide any changes to information previously provided, as well as the following milestone information, to the Department within 30 days of occurrence:

- Date on which the case was determined to involve emigration from the United States. (Generally, this date would be the time the U.S. child is matched with foreign adoptive parents.)
- Date of the U.S. final adoption or, alternatively, the date on which custody for purpose of adoption was granted in the United States;
- Date of foreign final adoption if custody for purpose of adoption was granted in the United States, to the extent practicable; and
- Any additional information when requested by the Department in a particular case.

The proposed rule mandates that an adoption service provider report the initial information to the Department within 30 days of identifying that the case involves the emigration of a child from the United States, and subsequently within 30 days of each milestone or change to previously reported information. The proposed rule does not include details on the mechanics of how and where to report the information listed in § 99.2. The Department plans to post on its Web site instructions to adoption service providers on how and where to send the required basic information on a particular case.

The Department and DHS Role

Section 303(d) of the IAA envisioned that DHS and the Department would agree on a rule on reporting requirements needed for the Case Registry. The Department is currently developing the Case Registry and coordinating with DHS on the case-tracking functions for immigrating children. DHS has a substantial role in cases involving immigrating children. On the other hand, DHS is not directly involved in outgoing cases at all. Nevertheless, in keeping with section 303(d) of the IAA, 22 CFR part 99 was jointly reviewed and approved by the Department and DHS. However, the regulation only adds a new part to the Department's regulations at Title 22 of the Code of Federal Regulations. No changes are made to any DHS regulations, nor will the rule appear in Title 8 of the Code of Federal Regulations.

IV. Regulatory Review:

A. Administrative Procedures Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 533), the Department is publishing this proposed rule and inviting public comment. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612 and Executive Order 13272, section 3(b), the Department of State has evaluated the effects of this proposed action on small entities, and has determined, and hereby certifies, pursuant to 5 U.S.C. 605(b), that it would not have a significant economic impact on a substantial number of small entities. As stated in the final rule for 22 CFR part 96 (71 FR 8064, 8128), the Department estimates that overall there are between 420 and 600 ASPs that may have to comply with the accreditation regulations, all of whom are likely to be small entities. However, overall, the number of outgoing intercountry adoption cases is expected to be very small in comparison with the number of incoming cases. Consequently, there will be very few ASPs who are small entities and who will also be involved in outgoing cases. The proposed rule requires only extremely limited reporting requirements for outgoing cases. Thus, the Department does not believe the economic impact on small entities will be significant; however, the Department welcomes public comment on the rule's impact on small entities and the cost of reporting requirements mandated by the IAA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. The rule would not result in an 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, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

E. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132. The Convention and the IAA do, however, address issues that previously had been regulated primarily at the State level, as discussed in the preamble to the proposed rule on accreditation and approval of agencies and persons, appearing at 68 FR 54064, 54069–54070. These regulations do not create new federalism implications beyond those created by the IAA, and the Department has been careful to limit reporting duties of State, local, and tribal authorities to those necessitated by the IAA. We believe the burden of reporting the proposed information to the Department will be minimal. As with the regulations on accreditation and approval, the Department welcomes comments from State and local agencies and tribal governments on the proposed regulations. We also envision significant outreach and consultation with appropriate State authorities in the ultimate implementation of any regulation on this topic.

F. Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a "significant regulatory action" within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

G. Executive Order 12988: Civil Justice Reform

The Department has reviewed this rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

H. The Paperwork Reduction Act (PRA) of 1995

Under the PRA, 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to the Office of Management and Budget (OMB) for review and approval information collection requirements imposed on "persons" as defined in the PRA. Section 503(c) of the IAA exempts from the PRA information collection "for purposes of sections 104, 202(b)(4), and 303(d)" of the IAA "or for use as a Convention record as defined" in the IAA. All information collections that relate to outgoing non-Convention cases will be collections made for the purposes of section 303(d) of the IAA, and thereby exempt. All information collections that relate to outgoing Convention cases will be Convention records as defined in and subject to the preservation requirements of 22 CFR 98, which implements section 401(a) of the IAA. Additionally, the majority of information collection imposed on persons pursuant to this rule, with respect to both Convention and non-Convention cases, will be for the purposes of obtaining information for congressional reports required under section 104 of the IAA. Accordingly, the Department has concluded that the PRA does not apply to information collected from the public under this rule.

List of Subjects in 22 CFR Part 99

Adoption and foster care; International agreements; Reporting and recordkeeping requirements.

Accordingly, the Department proposes to add new part 99 to title 22 of the CFR, chapter I, subchapter J, to read as follows:

PART 99—REPORTING ON CONVENTION AND NON-CONVENTION ADOPTIONS OF EMIGRATING CHILDREN

Sec.
99.1 Definitions.
99.2 Reporting requirements for adoptions involving emigrating U.S. children.
99.3 [Reserved].

Authority: The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

§ 99.1 Definitions.

As used in this part, the term:

(a) *Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

(b) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 99.2 Reporting requirements for adoption cases involving emigrating U.S. children.

(a) An agency (including an accredited agency and temporarily accredited agency), person (including an approved person), public domestic authority, or other adoption service provider providing adoption services in a case involving the emigration of a child from the United States must report information to the Secretary in accordance with this section if it is identified as the reporting provider in accordance with paragraph (b) of this section.

(b) In a Convention case in which an accredited agency, temporarily accredited agency, or approved person is providing adoption services, the primary provider is the reporting provider. In any other Convention case, or in a non-Convention case, the reporting provider is the agency, person, public domestic authority, or other adoption service provider that is providing adoption services in the case, if it is the only provider of adoption services. If there is more than one more provider of adoption services in a non-Convention case, the reporting provider is the one that has child placement responsibility, as evidenced by the following factors:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birthparent or other legal guardian for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a foreign government or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to a foreign country information about a child that is under consideration for adoption.

(c) A reporting provider, as identified in paragraph (b) of this section, must report the following identifying information to the Secretary for each outgoing case within 30 days of learning that the case involves emigration of a child from the United States to a foreign country:

(1) Name, date of birth of child, and place of birth of child;

(2) The U.S. State from which the child is emigrating;

(3) The country to which the child is immigrating;

(4) The U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and

(5) Its name, address, phone number, and other contact information.

(d) A reporting provider, as identified in paragraph (b) of this section, must report any changes to information previously provided as well as the

following milestone information to the Secretary for each outgoing case within 30 days of occurrence:

(1) Date case determined to involve emigration from the United States (generally the time the U.S. child is matched with foreign adoptive parents);

(2) Date of U. S. final adoption or date on which custody for the purpose of adoption was granted in United States;

(3) Date of foreign final adoption if custody for purpose of adoption was granted in the United States, to the extent practicable; and

(4) Any additional information when requested by the Secretary in a particular case.

§ 99.3 [Reserved]

Dated: June 15, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

Dated: August 30, 2006.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

[FR Doc. 06–7526 Filed 9–12–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118788–06]

RIN–1545–BF63

Definition of Essential Governmental Function Under Section 7871 and Limitation to Activities Customarily Performed by States and Local Governments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document corrects an advance notice of proposed rulemaking (REG–118788–06) that was published in the **Federal Register** on Wednesday, August 9, 2006 (71 FR 45474), that applies to Indian tribal governments and to State and local governments that issue bonds for the benefit of Indian tribal governments.

FOR FURTHER INFORMATION CONTACT: Aviva M. Roth, (202) 622–4164 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking, (REG–118788–06) that is the subject of this correction is under section 7871 of the Internal Revenue Code.

Need for Correction

As published, REG–118788–06 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the advance notice of proposed rulemaking (REG–118788–06) that were the subject of FR. Doc. E6–12884, is corrected as follows:

On page 45474, preamble, under the caption "**FOR FURTHER INFORMATION CONTACT:**", line 4, the language "Aviva M. Roth, (202) 622–3980 (not toll-" is corrected to read "Aviva M. Roth, (202) 622–4164 (not toll-".

Guy R. Traynor,

Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–15119 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118775–06]

RIN 1545–BF64

Revisions to Regulations Relating to Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under sections 871 and 881 of the Internal Revenue Code relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation.

DATES: The public hearing, originally scheduled for October 6, 2006, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Wednesday, August 9, 2006 (71 FR 45474), announced that a public hearing was scheduled for October 6, 2006, at 10 a.m., in the IRS Auditorium (New Carrollton Federal Building), 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is under sections 871 and 881 of the Internal Revenue Code.

The public comment period for these regulations expired on August 24, 2006. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, August 31, 2006, no one has requested to speak. Therefore, the public hearing scheduled for October 6, 2006, is cancelled.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–15127 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–145154–05]

RIN 1545–BF68

User Fees Relating to Enrollment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–145154–05) that was published in the **Federal Register** on Tuesday, August 29, 2006 (71 FR 51179) relating to user fees for the special enrollment examination to become an enrolled agent, the application for enrollment of enrolled agents, and the renewal of this enrollment.

FOR FURTHER INFORMATION CONTACT: Matthew Cooper (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correcting amendment that is the subject of this document is under section 9701 of Title 31 of the United States Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–145154–05) contains

an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Correction of Publication

In proposed rule FR Doc. 06–7246, beginning on page 51179 in the issue of August 29, 2006, make the following correction:

§ 300.6 [Corrected]

On page 51181, in the center column, revise the second heading for "§ 300.5 Renewal of enrollment of enrolled agent fee." to read "§ 300.6 Renewal of enrollment of enrolled agent fee."

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–15121 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–145154–05]

RIN 1545–BF68

User Fees Relating to Enrollment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–145154–05) that was published in the **Federal Register** on Tuesday, August 29, 2006 (71 FR 51179) relating to user fees for the special enrollment examination to become an enrolled agent, the application for enrollment of enrolled agents, and the renewal of this enrollment.

FOR FURTHER INFORMATION CONTACT: Matthew Cooper (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 9701 of Title 31 of the United States Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–145154–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking (REG–145154–05), which was the subject of FR Doc. 06–7246, is corrected as follows:

On page 51181, column 1, in the preamble, under the paragraph heading "Comments and Public Hearing", second paragraph, line 4, the language Bell Street, Crystal City, VA. Due to" is corrected to read "Bell Street, Arlington, VA, 22202. Due to".

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–15118 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Customs Forms for Priority Mail To or From "969" ZIP Codes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service™ proposes to require customs declarations on certain Priority Mail® mailpieces to or from ZIP Codes™ beginning with the prefix 969.

DATES: Submit comments on or before October 13, 2006.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, Postal Service, 475 L'Enfant Plaza SW. RM 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, 202–268–7262.

SUPPLEMENTARY INFORMATION: In January 2003, the Postal Service published a *Postal Bulletin* article asking customers to affix either PS Form 2976, *Customs Declaration CN22—Sender's Declaration,* or PS Form 2976–A, *Customs Declaration and Dispatch Note*—CP72, to all mailpieces weighing 16 ounces or more addressed to Guam. In March 2003, we revised our request to include mailpieces addressed to all ZIP Codes beginning with the 969 ZIP Code prefix. We now propose to make this request a requirement for all domestic-rated Priority Mail pieces weighing 16 ounces or more, or containing dutiable merchandise, sent to or from ZIP Codes beginning with the prefix 969.

This revision to Postal Service standards, requiring an appropriate customs declaration for all mail sent to or from ZIP Codes beginning with the prefix 969, will improve service. It will also provide accountability, which will ensure efficient processing.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, as follows: *Mailing Standards of the United States Postal Service,* Domestic Mail Manual

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

2.0 Domestic Mail

* * * * *

[Add new 2.4 as follows:]

2.4 Customs Forms Required

Regardless of contents, all Priority Mail containing dutiable merchandise or weighing 16 ounces or more sent from the United States to a ZIP Code beginning with the prefix 969, and all Priority Mail sent from a ZIP Code beginning with the prefix 969 to the United States, must bear either Form 2976 or Form 2976–A. This mail must be presented to an employee at a post office, to a letter carrier when using Click-N-Ship with Carrier Pickup, or to a Postal Service employee designated by the postmaster.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–15112 Filed 9–12–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2006–0668; FRL–8219–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Sections 111(d) and 129 negative declaration submitted by the Vermont Department of Environmental Conservation (VT DEC) on June 30, 2006. This negative declaration adequately certifies that there are no existing "other solid waste incineration" (OSWI) units located within the boundaries of the State of Vermont.

DATES: EPA must receive comments in writing by October 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2006–0668 by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail*: *brown.dan@epa.gov.*
3. *Fax*: (617) 918–0048.
4. *Mail*: "EPA–R01–OAR–2006–0668", Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.
5. *Hand Delivery or Courier.* Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Daniel Brown, Chief, Air Permits, Toxics & Indoor Air Programs Unit, Office of Ecosystem Protection (CAP), EPA–New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1048.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register.**

Dated: September 2, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E6–15199 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2006–0575; FRL–8219–4]

Alabama: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Alabama has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Alabama. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Comments must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2006–0575 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: middlebrooks.gail@epa.gov.*
- *Fax:* (404) 562–8439 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery:* Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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–R04–RCRA–2006–0575. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy. You may view and copy Alabama's application at the EPA, Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Library is open from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Library telephone number is (404) 562–8190.

You may also view and copy Alabama's application from 8 a.m. to 4:30 p.m. at The Alabama Department of Environmental Management, 1400 Coliseum Blvd., Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8494; fax number: (404) 562–8439; e-mail address: *middlebrooks.gail @epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: August 31, 2006.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. E6–15203 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 06–1730]

Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of comment period.

SUMMARY: This document grants a motion requesting an extension of time to file comments on an intercarrier compensation reform plan, the "Missoula Plan." The Order modifies the pleading cycle by extending the comment period in order to facilitate the development of a more substantive and complete record in this proceeding.

DATES: Submit comments on or before October 25, 2006. Submit reply comments on or before December 11, 2006.

ADDRESSES: You may submit comments, identified by CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *victoria.goldberg@fcc.gov.* Include CC Docket 01–92 in the subject line of the message.
- *Fax:* To the attention of Victoria Goldberg at 202–418–1587. Include CC Docket 01–92 on the cover page.
- *Mail:* All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery / Courier:* The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
  - —The filing hours at this location are 8 a.m. to 7 p.m.
  - —All hand deliveries must be held together with rubber bands or fasteners.
  - —Any envelopes must be disposed of before entering the building.
  - —Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Notice requesting comment on the Missoula Plan, 71 FR 45510, August 9, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order released August 29, 2006. The complete text of the Order is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

By the Order, the Wireline Competition Bureau (WCB) grants a motion requesting an extension of the comment dates and modifies the pleading cycle for comments on an intercarrier compensation plan called the "Missoula Plan." The Missoula Plan was filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation. On July 25, 2006, the WCB released a Public Notice requesting that comments on the Missoula Plan be filed by September 25, 2006, and reply comments by November 9, 2006, 71 FR 45510, August 9, 2006.

On August 24, 2006, the National Association of Regulatory Utility Commissioners filed a motion requesting an extension of the comment date to October 25, 2006, and the reply comment date to December 9, 2006.

The WCB determined that providing additional time to file comments and reply comments will facilitate the development of a more substantive and complete record in this proceeding. Although it is the policy of the Commission that extensions of time shall not be routinely granted, given the extensive nature of the Missoula Plan and the complexity of the proposals contained therein, the WCB determined that good cause exists to provide parties an extension of time, from September 25, 2006 to October 25, 2006 for filing comments, and from November 9, 2006 to December 11, 2006 for filing reply comments in this proceeding.

Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. 154(i), 154(j), 155(c), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291, 1.46, the pleading cycle established in this matter shall be modified as follows:

Comments Due: October 25, 2006.

Reply Comments Due: December 11, 2006.

It is further ordered that the Motion of the National Association of Regulatory Utility Commissioners for Extension of Time is *granted,* as set forth herein.

Federal Communications Commission.

Donald K. Stockdale,

Associate Chief, Wireline Competition Bureau.

[FR Doc. E6–15196 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–106]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on a broad range of issues concerning the compensation of providers of telecommunications relay services (TRS) from the Interstate TRS Fund (Fund). The Commission seeks comment on: Alternative cost recovery methodologies for interstate traditional TRS and Speech-to-Speech (STS), including Hamilton Relay, Inc.'s (Hamilton) proposed "MARS" plan ("Multi-state Average Structure"), and also whether traditional TRS and STS should be compensated at the same rate; the appropriate cost recovery methodology for Video Relay Service (VRS) and the length of time the VRS rate should be in effect; issues relating to "reasonable" costs compensable under the present cost recovery methodology, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund, and ways to improve the management and administration of the Fund, including adopting measures for assessing the performance and efficiency of the Fund and to deter waste, fraud, and abuse.

DATES: Comments are due on or before October 30, 2006. Reply comments are due on or before November 13, 2006. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements should be submitted on or before November 13, 2006.

ADDRESSES: You may submit comments, identified by [CG Docket number 03–123 and/or FCC Number 06–106], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, you may submit your PRA comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy_L._LaLonde@omb.eop.gov,* or via fax at (202) 395–5167. To submit your comments by U.S. postal mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–C216, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.* For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Further Notice of Proposed Rulemaking *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (2006 Cost Recovery FNPRM);* CG Docket No. 03–123, FCC 06–106, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. This is a summary of the Commission's document FCC 06–106, TRS and STS Services for Individuals with Hearing and Speech Disabilities, *2006 Cost Recovery FNPRM,* CG Docket No. 03–123, adopted July 13, 2006, released July 20, 2006, seeking comment on issues concerning the compensation of TRS providers from the Fund. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing

address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in which ex parte communications are subject to disclosure. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206 (b) of the Commission's rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The *2006 Cost Recovery FNPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the PRA of 1995, Public Law 104–13. Public and agency comment are November 13, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *2006 Cost Recovery Further Notice of Proposed Rulemaking,* CG Docket No. 03–123, FCC 06–106.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Number of Respondents: 5,060.

Number of Responses: 5,066.

Respondents: Business and other for-profit entities; State, Local or Tribal Government.

Estimated Time per response: 10 hours.

Frequency of Response: Annual and on occasion reporting requirement; Recordkeeping; Third party disclosure.

Total Annual Hourly Burden: $11,148.

Total Annual Costs: $0.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 21, 2001, the Commission released the *2001 TRS Cost Recovery MO&O & FNPRM,* In the Matter of Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guideline, CC Docket No. 98–67, FCC 01–371. In the *2001 TRS Cost Recovery MO&O &FNPRM,* the Commission directed the TRS administrator to continue applying the average per minute compensation methodology to develop traditional TRS compensation rates; required TRS providers to submit certain TRS-related costs and demand data to TRS Fund administrator; and directed the TRS administrator to expand the TRS Center Data Request, a form for providers to itemize their actual and projected cost and demand data, to include specific sections to capture STS costs and completed conversation minutes for STS and VRS.

On July 20, 2006, the Commission released a *2006 Cost Recovery FNPRM,* In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–106. The Commission seeks comment on a broad range of issues concerning the compensation of providers of TRS from the Interstate TRS Fund (Fund). In the *2006 Cost Recovery FNPRM,* the Commission seeks comment on: (1) Hamilton's proposed "MARS" plan and alternative cost recovery methodologies for traditional TRS, STS and Internet Protocol (IP) Relay, including any possible changes to the existing TRS Center Data Request form; (2) appropriate cost recovery methodology for VRS, including possible changes to the existing TRS Center Data Request form; and (3) the basis of "reasonable" costs of providing all forms of TRS that should be compensable under present cost recovery methodology, including marketing and outreach expenses, overhead costs and executive compensation. Also, in the *2006 Cost Recovery FNPRM,* the Commission proposes to improve the efficiency of the rate setting process, and to ensure the reasonableness of the compensation rates for all forms of TRS. The *2006 Cost Recovery FNPRM* proposes a mandatory reporting requirement that TRS providers compensated from the Interstate TRS Fund would be required to submit rate data to the Commission, either annually or for a multi-year period, for the states in which they provide service.

Synopsis

Background

TRS Cost Recovery Framework

TRS. When section 225 of the Communications Act was enacted and implemented, TRS calls were placed using a TTY connected to the Public Switched Telephone Network (PSTN) (traditional TRS). In March 2000, the Commission recognized several new forms of TRS, including STS and VRS. STS is used by persons with a speech disability. Specially trained Communications Assistants (CAs) who understand the speech patterns of persons with speech disabilities repeat the words spoken to the other party to the call. The Commission made STS a mandatory service, so that all states with a certified state TRS program must offer this service. VRS is an Internet-based form of TRS that allows the TRS user whose primary language is American Sign Language (ASL) to communicate with the CA in ASL, rather than text, through a video link. In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay. Like traditional TRS, IP Relay uses text, but the user connects to the CA via the Internet and a personal computer or other web-enabled device. Most recently, in August 2003, the Commission recognized captioned telephone service as a form of TRS.

Compensation of TRS Providers. Section 225 of the Communications Act creates a cost recovery regime whereby providers of TRS are compensated for the reasonable costs caused by TRS. This regime is based on the "jurisdictional separation of costs." Section 225 of the Communications Act provides that the costs caused by interstate TRS "shall be recovered from all subscribers for every interstate service," and the costs caused by the provision of intrastate TRS "shall be recovered from the intrastate jurisdiction." As a general matter, the costs caused by intrastate TRS are recovered by each state. No specific funding method is required for intrastate TRS or state TRS programs. States generally recover the costs of intrastate TRS either through rate adjustments or surcharges assessed on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs. Most states presently select one provider to offer TRS within the state.

With respect to interstate TRS, there are two aspects to the cost recovery framework set forth in the regulations: (1) Collecting contributions from common carriers providing interstate telecommunications services to create a fund from which eligible TRS providers may be compensated; and (2) compensating eligible TRS providers from the Fund for the costs of providing eligible TRS services. In creating the Interstate TRS Fund, the Commission enacted a shared funding mechanism based on contributions from all carriers who provide interstate telecommunications services. All contributions are placed in the Fund, which is administered by the TRS Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA). The Fund administrator uses these funds to compensate "eligible" TRS providers for the costs of providing TRS. Compensation is based on per-minute rates adopted each year by the Commission. There are currently four different compensation rates for the different forms of TRS: traditional TRS, IP Relay, STS, and VRS.

To determine the annual per-minute compensation rates under the present cost recovery methodology, TRS providers are required to submit to the Fund administrator projected cost and minutes of use data for a two-year period. Specifically, TRS providers must supply the administrator with "total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment," as well as "other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements." Using this data, the Fund administrator determines the average per-minute compensation rate for the various forms of TRS, and submits the rates to the Commission for approval. The Commission issues a rate order each year by June 30, either approving or modifying these rates.

Discussion

In recent years, the annual determination of the TRS compensation rates—and particularly the VRS rate—under the present methodology has presented a variety of regulatory and administrative challenges. Further, comments filed in response to NECA's filing of proposed compensation rates for the 2006–2007 Fund year reflect dissatisfaction with the rate setting process, as well as with the proposed rates. Thus, the Commission seeks comment on numerous issues relating to the cost recovery methodology used for determining the TRS compensation rates paid by the Fund, as well as the scope of the costs properly compensable under section 225 of the Communications Act and the TRS regime as intended by Congress.

In so doing, the Commission is mindful of the role of TRS as an accommodation under the ADA for persons with disabilities. As the Commission has stated, "because Title IV places the obligation on carriers providing voice telephone services to also offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities, the costs of providing TRS are really just another cost of doing business generally, *i.e.*, of providing voice telephone service." For this reason, "the annual determination of the TRS compensation rates is not akin to a rate-making process that determines the charges a regulated entity may charge its customers," but rather "it is a determination of a per-minute compensation rate that will cover the reasonable costs incurred in providing the TRS services mandated by Congress and our regulations." As the Commission has stated in the context of disallowing research and development expenses, the Fund is not intended to be "an unbounded source of funding for enhancements that go beyond [the mandatory minimum] standards." It follows that the use of TRS cost recovery methodologies and procedures that fairly and predictably compensate providers for the reasonable costs of providing service will not only be faithful to the intent of the ADA, but will also benefit all consumers.

Cost Recovery Methodology for Traditional TRS, STS, and IP Relay

Hamilton's MARS Plan

Hamilton requests that the Commission initiate a proceeding to adopt a proposed alternative cost recovery methodology—the "MARS" Plan—for determining the per-minute compensation rate for traditional TRS. Under the proposed MARS plan, the interstate traditional TRS rate would be calculated based on a weighted average of the intrastate TRS rates paid by the states. In addition, because some states base their TRS rate on "session minutes," rather than "conversation minutes," Hamilton proposes using a factor to convert session minutes to conversation minutes. Hamilton bases its proposal on the intrastate TRS data from twenty-three states for which information was readily available.

According to Hamilton, the MARS plan is a superior approach to the current cost recovery methodology for traditional interstate TRS because it is grounded in competition, as most states select an intrastate TRS provider through a competitive bidding process. Hamilton also asserts that this approach

would be easier and less costly to administer and will benefit consumers "by lowering interstate TRS rates to the competitively-based market value."

Hamilton also notes that under the present cost recovery methodology—what it calls "rate of return regulation"—the Fund administrator and the Commission have "to examine the minutiae of each TRS providers" costs and capital investments," and review all costs submitted by each provider to determine whether to allow or disallow each individual cost. Hamilton adds that this "complicated rate-making process * * * will only get more complicated as providers seek to include ever more of their costs in the rate base." Hamilton also asserts that the present methodology "fails to replicate the competitive market and instead discourages efficiency and encourages the 'padding' of investment."

Hamilton asserts that, by contrast, the MARS plan would eliminate the need to examine any carrier data. Under the plan, the Fund administrator would simply collect the per-minute rate and minutes of use for each state, which are "presumptively competitive rates * * * because they have been subject to a state contract competitive bidding process," and determine the interstate rate by averaging those rates, adjusted for minutes of use. Hamilton notes that this plan would avoid the costs associated with collecting, evaluating, correcting, and re-evaluating TRS provider data."

Use of the MARS Plan. The Commission seeks comment on whether the it should adopt the MARS plan, in whole or in part (such as in a hybrid approach in which the MARS plan is used to set a rate cap), as the cost recovery methodology for traditional interstate TRS and possibly, other forms of TRS, such as STS. Under the MARS Plan the compensation rate for traditional interstate TRS is based on an average of state rates for intrastate traditional TRS. In contrast, the present methodology is based on projected cost and demand data submitted by the providers. The Commission seeks comment generally on whether the MARS plan, because it is based on competitively bid state rates, will result in a fairer, more reasonable compensation rate. The Commission urges commenters to address the advantages and disadvantages of the present methodology, the MARS plan, and any alternative approach based, in whole or in part, on either.

The Commission also seeks comment on the fact that some states compensate for session minutes, rather than conversation minutes. The Fund presently compensates providers for conversation minutes (*i.e.*, actual conversation time between the calling and called party), not session minutes (*i.e.*, time the CA spends on a call). Because some state rates are based on session minutes, Hamilton proposed calculating a conversion factor to convert the session minute rates to conversation minute rates. The Commission seeks comment on the appropriateness of converting session minutes to conversation minutes, and specifically on how the factor should be calculated and applied. The Commission also seeks comment on whether it would be more appropriate to use session minutes instead of conversation minutes. Further, the Commission seeks comment on whether some states' practice of rounding call minutes to the nearest full minute might affect the use of the MARS plan, and if so, how.

The Commission also seeks comment on how the MARS plan might be implemented. For example, if a state rate has been based on the interstate rate, inclusion of that state's rate into the MARS plan calculation may not be appropriate. The Commission seeks comment on whether any other factors that might warrant excluding a particular state's rate from the calculation. The Commission also seeks comment on how often states adopt TRS compensation rates. The Commission also seeks comment on what data would be required from the states and the extent to which this data is readily available. In addition, the Commission asks parties to comment on any other issues relating to the implementation of the MARS plan and the calculation of rates under that approach, including the costs and benefits of implementing this plan.

In addition, Hamilton proposes to weight the individual state rates by that states' total minutes of use so that states with relatively high rates and low minutes of use do not skew the average. The Commission seeks comment on whether it would be appropriate to weight the states' rates, and, if so, how a weighted rate should be calculated.

Application of MARS Plan to STS

The Commission recognizes that the MARS Plan is specifically proposed as a methodology for developing the compensation rate for interstate traditional TRS. Because intrastate STS is also a mandatory form of TRS, the Commission seeks comment on whether the MARS plan (or a similar plan based on state STS rates) could also be used to determine the interstate STS compensation rate. The Commission also seeks comment on other issues concerning implementation of the MARS plan as applied to STS, including the exclusion of particular states' rates, the effect of using session minutes rather than conversation minutes, using a weighted average, and whether the rate period should be one year or some longer period.

Same Compensation Rate for Traditional TRS, STS, and IP Relay

NECA has noted that in recent years, given the small demand for this service, the STS compensation rate has not been stable. NECA therefore recommends in its filing for the 2006–2007 Fund year that the Commission consider adopting one rate that would apply to both STS and traditional TRS, based on consolidating the providers' data for these services. The Commission seeks comment on whether the same rate should apply to both traditional TRS and STS, under the existing cost recovery methodology, the MARS plan (or a similar type of plan based on state rates), or any other methodology, including modified versions of the existing cost recovery methodology and/or the MARS plan. The Commission further seeks comment on any other matters relating to whether traditional TRS and STS should be compensated at the same rate.

The Commission seeks comment on whether IP Relay calls should also be compensated at the same rate as traditional TRS. The Commission understands that in many instances the same CAs working at the same TRS facility handle traditional TRS and IP Relay calls interchangeably, and that the only difference between the calls is how they reach the relay center (*i.e.*, via the PSTN or via the Internet). The Commission seeks comment generally on this assumption, and on any cost differences between providing traditional TRS and providing IP Relay.

Alternative Cost Recovery Methodologies for Traditional TRS, STS, and IP Relay

The Commission also seeks comment on whether other cost recovery methodologies might be appropriate for traditional TRS, STS, and IP Relay, and easier to administer and result in more predictable rates than the current methodology. For example, the Commission seeks comment on whether the interstate traditional TRS and STS rates should simply be the same as the intrastate rate paid for a similar call coming into the relay center and handled by the same provider. Under this approach, an interstate traditional TRS or STS call originating in Maryland would be compensated at the intrastate

rate for intrastate calls in the state of Maryland. Because the actual cost of providing a traditional TRS or STS call should be the same regardless of its jurisdictional nature, the intrastate rate may provide a reasonable and fair recovery for interstate calls as well.

The Commission seeks comment on this proposal and any related issues, including whether this methodology may be burdensome or overcomplicated, or whether there might need to be an adjustment to the compensation for interstate calls if, for example, the intrastate rate is impacted by requirements different from the interstate requirements. In these circumstances, for example, the compensation rate might appropriately be based on the lesser of the rate resulting from the MARS plan or the rate the particular state pays for intrastate calls. The Commission also seeks comment on this alternative.

Use of a "True-up" or Transition to Actual Costs

The Commission also seeks comment on whether, under the MARS plan or any other cost recovery methodology for traditional TRS, STS, and IP Relay, there should be a "true-up" at the end of the Fund-year based on actual reasonable costs. Under a true-up, providers would be required to reimburse the Fund for any amount by which their payments exceed actual reasonable costs.

The Commission seeks comment generally on any issues relating to the use of a true-up, including how a true-up could be implemented, what record keeping requirements might be required, and when and how often the true-up should occur. The Commission also seeks comment on whether, and how, to transition to a cost recovery methodology under which rates are set based on actual reasonable costs, thus eliminating any need for a true-up in most, if not all, cases.

Rate Period for Traditional TRS, STS, and IP Relay

Finally, the Commission seeks comment on whether the interstate traditional TRS rate, the interstate STS rate, and the IP Relay rate should continue to be set for a one-year period or whether a longer rate period is appropriate. The Commission seeks comment on the advantages and disadvantages of using either a one-year rate period or some longer or shorter period of time for these services.

Cost Recovery Methodology for VRS

The Appropriate Cost Recovery Methodology

Because of the continued sharp growth in the use of VRS, open issues concerning what costs may appropriately be included in determining the compensation rate under the current methodology, and the providers' demonstrated inability to accurately forecast demand, the Commission seeks additional comment on the issues raised in 2004 (and summarized above). The Commission also notes that, since 2004, the Commission has adopted VRS speed of answer and interoperability requirements, which may also affect cost recovery issues. In addition, the Commission has recently permitted entities desiring to offer VRS to be certified by the Commission. As a result, the Commission expects additional VRS providers to enter the market. Many of these providers, like some of the existing providers, will not be traditional telephone companies and therefore, may present unique cost issues. For these reasons, the Commission believes that it is important to refresh the record on what the appropriate cost recovery methodology for VRS should be.

The Commission is particularly interested in adopting a methodology that would result in more predictability for the providers, and be consistent with the principle that TRS is intended to be an accommodation for persons with disabilities, entitling providers to their "reasonable" costs of providing this service. The Commission therefore seeks comment on whether modifications should be made to the current methodology or whether there is a methodology other than the current compensation scheme that is more appropriate. For example, should the Commission adopt a compensation methodology for VRS where funds are disbursed based on each individual provider's actual, reasonable costs? Should the Commission treat VRS as a national service, seek competitive bids, and thereby permit the two or three lowest bidders to provide service at the lowest bid rate, or set compensation rates based on the lowest bid, with some sort of incentive or disincentive built into the auction process to ensure competitive bidding without limiting the number of ultimate providers at that rate? The Commission seeks comment on these proposals and any other issues relevant to adopting an appropriate cost recovery methodology for VRS.

Use of a "True-up" or Transition to Actual Costs

The Commission also seeks comment on whether, under whatever methodology is used, providers should be required to reimburse the Fund for any amount by which their payments exceed reasonable actual costs. A true-up based on reasonable actual costs might both minimize incentives for providers to underestimate projected minutes of use and overstate projected costs, and ensure that providers are not over-compensated. The Commission seeks comment on whether any such over-compensation from the Fund can be reconciled with section 225 of the Communications Act.

Rate Period for VRS

In 2004, Commission sought comment on whether it is difficult for VRS providers to plan and budget for the provision of this service, particularly with regard to labor costs and staffing. *2004 TRS Report and Order*, 19 FCC Rcd at 12569, paragraph 247; published at 69 FR 53346, September 1, 2006 and 69 FR 53382, September 1, 2004. The Commission also recognized that, as a general matter, the operating expenses for VRS are more complex than with the other forms of TRS, and overall the costs are higher. The Commission therefore sought comment on whether the VRS compensation rate should be set for a two-year period, rather than a one-year period.

"Reasonable" Costs and Confidentiality of Provider Data

NECA's Data Collection Form sets forth several categories of costs related to the provision of TRS for which providers may seek compensation. These categories apply to all forms of TRS. As discussed below, in some instances these categories of costs may not be defined with sufficient clarity, and therefore providers may have been submitting costs that should not be included in the compensation rates as reasonable costs of providing service. For this reason, with regard to certain types of costs the Commission seeks comment on the nature and extent of such costs that are reasonable and consistent with section 225 of the Communications Act.

Marketing and Outreach Expenses

The Commission seeks comment on the extent to which marketing and outreach should continue to be compensated by the Fund. To the extent these activities should be covered, the Commission seeks comment on the types of expenses that should be covered and whether there is a

distinction between a marketing and outreach, and if so, how each should be defined.

The Commission seeks comment on the nature of outreach and marketing expenses that may properly be compensable under section 225 of the Communications Act, and how these expenses may be more precisely defined. The Commission also seeks comment on whether *any* marketing expenses are properly includable in the rates. The Commission notes that, as a general matter, the Commission's rules address outreach and are directed at making the public aware of the use and availability of TRS generally and encouraging hearing persons and merchants to stay on the line and accept relay calls. 47 CFR 64.604(c)(3) of the Commission's rules ("Public access to information"). Therefore, the Commission seeks comment on whether anything more than non-branded educational outreach should be compensated by the Fund. The Commission tentatively concludes that provider-specific "branded" marketing is inappropriate for compensation from the Fund, and that the Fund should not be used to promote any particular provider's service over the service of competing providers, or to encourage consumers to switch providers. The Commission also seeks comment on whether it is consistent with the statute to fund marketing or outreach campaigns by *each* provider, since they may largely be duplicative and directed at the same audience. Finally, the Commission seeks comment generally on the nature and cost of outreach and marketing activities providers have funded in the past, as well as amount and nature of the providers' current outreach and marketing efforts that are geared toward hearing persons and merchants, so that they do not hang up on relay calls.

The Commission also seeks comment on whether, as NECA has suggested, the amount of outreach and marketing expenses compensated from the Fund should be based on a given percentage of the compensation rate.

Overhead Costs

The Commission seeks comment on whether, consistent with section 225 of the Communications Act, any general overhead costs (*i.e.*, those indirect costs that are neither cost-causative nor definable) should be compensable by the Fund as a reasonable cost of providing TRS. The Commission notes that under the statute, TRS was intended to be a service offered by common carriers that already offer voice telephone service. Further, the cost recovery mechanism was intended to ensure that carriers recover the costs of providing this service, since consumers who use the service cannot be required to pay more than the rates paid for functionally equivalent voice communication services. 47 U.S.C. 225(d)(1)(D). In this light, the Commission seeks comment on whether providers' reasonable costs should be limited to their *marginal costs* of providing TRS, which would not include an allocation of general overhead costs. In other words, the Commission seeks comment on whether, consistent with the statute, the reasonable costs of providing TRS include only categories of costs actually incurred by providing TRS.

Assuming compensation of some overhead costs is consistent with the statute, the Commission seeks comment on the appropriate approach to allocating general overhead costs to the provision of TRS. Are there alternatives to allocating overhead costs as a percentage of total revenues? What limits should be placed on the recovery of such costs? Commenters supporting a percentage approach should also comment on what percentage is appropriate and why.

Legal and Lobbying Expenses

The Commission seeks comment on limits to the nature and amount of legal and lobbying expenses compensable under the "reasonableness" standard applicable to the compensation of all TRS costs, particularly with regard to such costs that are attributable to lobbying and not to compliance with the existing TRS rules. Should amounts allowed for legal and lobbying expenses be uniform for all providers, or be tied to the number or minutes of service provided?

The Commission also seeks comment on whether it is appropriate and consistent with the statutory meaning of costs caused by the service for the Fund to reimburse the "start up" expenses of new entities seeking to offer TRS. For example, should the Fund reimburse the legal and related organizational expenses of multiple new companies that desire to offer TRS, particularly when there are already numerous providers offering service?

Executive Compensation

The Commission seeks comment concerning the amount of executive compensation that is included in the providers' cost data, and on whether the number of executives for whom compensation is sought should be tied to, or limited by, the overall size of certain providers. Should reimbursement of such costs be limited and, if so, how? The Commission seeks comment, for example, on how the Commission might clarify the scope and nature of such costs that should be considered "reasonable" costs compensable by the Fund, and whether they should be limited to some percentage of other costs or in some other way.

Making Provider Cost and Demand Data Public

Historically, the Commission has honored requests by providers submitting projected cost and demand data to treat that information as confidential. The Commission recognizes, however, that this approach makes it is difficult for providers and the public (including entities that pay into the Fund) to comment on the reasonableness of the rates. The Commission therefore seeks comment generally on whether the providers' projected (and/or actual) cost and demand data, or particular categories of the cost and demand data, should be made public. The Commission seeks comment on whether there are categories of data that in particular should be given confidential treatment, and if so, why.

Management and Administration of the Fund

The Fund has grown from approximately $40 million to over $460 million since 2000. In addition, the number of providers offering service continues to grow, particularly with regard to IP Relay and VRS. Further, as noted above, new issues continue to arise concerning the nature and extent of certain costs that may be appropriately compensated from the Fund. For these reasons, the Commission seeks comment generally on steps the Commission may take to ensure the integrity of the Fund and to ensure that compensation is consistent with the statute.

Fund Administrator. The Commission seeks comment generally on measures the Commission might adopt to improve the management and administration of the Fund. Presently, the Commission's rules provide for the appointment of a Fund administrator, currently NECA. The administrator collects funds from all interstate carriers to create the Fund from which TRS providers are compensated. The administrator also proposes to the Commission, based on data submitted to it each year by the providers, the TRS compensation rates and the resulting Fund size and carrier contribution factor. The Commission seeks comment on how administration

of the Fund could be improved, and whether the rules that govern the activities of the administrator should be modified, including those addressing both the billing and collection process and the disbursement of funds to providers. The Commission seeks input from providers, users, and others, including government agencies, that may have experience with this and similar programs.

The Commission further seeks comment on ways in which the Commission might better assess the effectiveness and efficiency of the administrator's management of the Fund. The Commission seeks comment, for example, on whether there are performance measures the Commission might implement to assess the effectiveness of the TRS program and the Fund administrator. The Commission also seeks comment on whether the Fund administrator should be subject to additional reporting requirements and, if so, what they should be. In addition, the Commission seeks comment on whether such measures should mimic those used in the Universal Service Fund context. The Commission also seeks comment on any other changes that might be made to the Fund administrator's role in initially calculating the compensation rates proposed to the Commission. Finally, the Commission seeks comment on whether to adopt rules to implement ethical standards and address conflicts of interest for officers and employees of the administrator.

Oversight of Providers. The Commission also seeks comment on ways to ensure that the compensation paid to providers is legitimate and proper under the Commission's rules. The Commission seeks comment on whether there are other types of information that providers should be required to provide to ensure the integrity of Fund payments, such as financial statements, earning reports, and information related to any parent or affiliate. The Commission also seeks comment on the efficacy of the auditing powers presently granted the Fund administrator and the Commission under the Commission's rules, as well as the scope and frequency of such audits. *See* 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules.

Deterring Waste, Fraud, and Abuse. Finally, the Commission invites comment on any other ways to achieve more fair and efficient administration and management, as well as to deter and detect waste, fraud, and abuse. The Commission seeks to ensure that, with the number of providers and number of minutes of use continuing to increase, particularly with respect to VRS and IP Relay, the Fund is compensating providers only for legitimate minutes of use provided in compliance with the mandatory minimum standards, and that the compensation rates are based on accurate demand and cost data.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *2006 Cost Recovery FNPRM.* Written public comments are requested on this IRFA. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Statute 857 (1996). Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2006 Cost Recovery FNPRM* indicated on the first page of this document. The Commission will send a copy of the *2006 Cost Recovery FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rule

In recent years, the annual determination of the TRS compensation rates—and particularly the VRS rate—under the present methodology has presented a variety of regulatory and administrative challenges, such as the appropriateness of the current per-minute compensation methodology, the accuracy of provider demand projections, and the reasonableness of expenses related to outreach, marketing, overhead, and legal and lobbying services and Further, comments filed in response to NECA's filing of proposed compensation rates for the 2006–2007 Fund year reflect dissatisfaction with the rate setting *process,* as well as with the proposed rates and certain cost disallowances. For these reasons, in this *2006 Cost Recovery FNPRM,* the Commission seeks comment on numerous issues relating to the cost recovery methodology used for determining the TRS compensation rates paid the Fund, as well as the scope of the costs properly compensable under section 225 and the TRS regime as intended by Congress.

This *2006 Cost Recovery FNPRM* addresses alternative cost recovery methodologies for interstate traditional TRS. The present methodology for compensating traditional TRS providers for the cost of providing interstate service is based a per-minute compensation rate. Each year the Fund administrator collects projected cost and demand data from the providers, and determines an average per-minute compensation rate, which it submits to the Commission for approval or modification. Each provider is compensated for its minutes of use at this averaged rate based on the projected cost and demand data submitted by the providers. Therefore, providers do not receive reimbursement for their actual costs; their reimbursements are based on the averaged rate applied to their actual minutes of use.

Hamilton Relay, Inc. has proposed an alternative methodology to determine the compensation rate for interstate traditional TRS. Under Hamilton's proposal—called the "MARS plan" (Multi-state Average Rate Structure)—the compensation rate would be calculated based on an average of the intrastate TRS rates paid by the states. The state rates, under Hamilton's proposal, would be weighted based on the total minutes of use for each state. Hamilton proposes using a weighted average because otherwise states with a relatively high per minute intrastate rate, but a very small number of minutes, would skew the multi-state per minute rate higher than it should be.

Hamilton asserts that its proposed plan would be superior to the current methodology because state rates are set by a competitive bidding process. Hamilton also asserts that its proposal would be easier and less costly to administer. Hamilton further asserts that its proposal would benefit consumers "by lowering interstate TRS rates to the competitively based market value."

Hamilton also notes that under the present cost recovery methodology—what it calls "rate of return regulation"—the Fund administrator and the Commission have "to examine the minutiae of each TRS providers' costs and capital investments," and review all costs submitted by each provider to determine whether to allow or disallow each individual cost. Hamilton adds that this "complicated rate-making process * * * will only get more complicated as providers seek to include ever more of their costs in the rate base." Hamilton also asserts that the present methodology "fails to replicate the competitive market and instead discourages efficiency and encourages the 'padding' of investment."

Hamilton asserts that, by contrast, the MARS plan would eliminate the need to examine any carrier data.

Hamilton states that the Fund administrator would simply collect the per-minute rate and minutes of use for each state, which are "presumptively competitive rates * * * because they have been subject to a state contract competitive bidding process," and would determine the interstate rate by averaging those rates, adjusted for minutes of use. Hamilton notes that this plan would avoid the costs associated with collecting, evaluating, correcting, and re-evaluating TRS provider data."

Given our underlying regulatory concerns, the *2006 Cost Recovery FNRPM* seeks comment on Hamilton's proposal. Comments are sought on the advantages and disadvantages of this proposal compared to the current methodology, how the proposal would be implemented, how state minutes would be measured, and whether the rates would be set for a one year period or a longer time. This *2006 Cost Recovery FNPRM* also seeks comment on whether the MARS plan would be easier to administer and result in administrative cost. This *2006 Cost Recovery FNRPM* also seeks comment on whether the rate for interstate traditional TRS should be compensated at the same rate as Speech to Speech (STS) service.

This *2006 Cost Recovery FNPRM* also addresses the issue of the appropriate cost recovery methodology for VRS and the appropriate data reporting period for VRS. Because of the continued sharp growth in the use of VRS, open issues concerning what costs may appropriately be included in determining the compensation rate under the current methodology, and also because of the providers' demonstrated inability to accurately forecast demand, the *2006 Cost Recovery FNPRM* seeks additional comment on the issues raised in 2004 (and summarized above). The Commission also notes that recently the Commission has permitted entities desiring to offer VRS to be certified by the Commission. As a result, the Commission expects additional VRS providers to enter the market. Many of these providers, like some of the existing providers, will not be traditional telephone companies and therefore may present unique cost issues. For this reason, the Commission believes that it is important to refresh the record on what the appropriate cost recovery methodology for VRS should be.

The Commission is particularly interested in adopting a methodology that would result in more predictability for the providers, and that would be consistent with the principle that TRS is intended to be an accommodation for persons with disabilities, entitling providers to their "reasonable" costs of providing this service. The Commission therefore anticipates developing rules concerning a methodology other than the current compensation scheme that is more appropriate. For example, should the Commission adopt a compensation methodology for VRS where funds are disbursed based on each individual provider's actual, reasonable costs? Should the Commission treat VRS as a national service, seek competitive bids, and thereby permit the two or three lowest bidders to provide service at the lowest bid rate? The *2006 Cost Recovery FNPRM* seeks comment on these proposals and any other issues relevant to adopting an appropriate cost recovery methodology for VRS.

The *2006 Cost Recovery FNPRM* also addresses certain categories of provider costs. First, although the Commission continues to recognize the importance of outreach, the Commission seeks ways to define with sufficient clarity the nature of outreach and marketing expenses that may appropriately be included in providers' cost submissions. Second, with regard to overhead costs, the Commission notes that some providers have submitted costs that reflect a percentage of total company overhead costs based on the percentage of company revenues attributable to TRS. The Commission also notes that some providers' expenses for legal and lobbying have recently grown to more than $2 million a year for each provider. Finally, the Commission expresses its concern about the extent to which some salaries of corporate officers and executives have been included in submitted costs. This *2006 Cost Recovery FNPRM* therefore seeks to resolve the extent of such costs that are "reasonable" costs of providing TRS, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund.

In addition, this *2006 Cost Recovery FNPRM* addresses whether the providers' cost and demand data submitted to the Fund administrator should be made public. It also seeks comment on ways to improve the management and administration of the Fund, including adopting measures for assessing the performance and efficiency of the Fund and to deter waste, fraud, and abuse.

B. Legal Basis

The authority for actions proposed in this *2006 Cost Recovery FNPRM* may be found in sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 218 and 225.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of, small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

The Commission believes that the entities that may be affected by the proposed rules are TRS providers that offer interstate traditional TRS, interstate STS, interstate Captioned Telephone Service, IP Relay and VRS. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such forms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110. Currently, there are eleven TRS providers that offer interstate traditional TRS, interstate STS, interstate Captioned Telephone Service, IP Relay and VRS. These providers consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately three or fewer of these entities are small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed methodology for setting the interstate compensation rate for traditional TRS service may require the providers to submit rate data to the Commission, either annually or for a multi-year period, for the states in which they provide service. Further, adoption of a cost recovery methodology for VRS other than the current per-minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. Presently, VRS providers report their costs annually, and their minutes of use monthly, to the Interstate TRS Fund Administrator. In addition, the *2006 Cost Recovery FNPRM* contemplates adoption of a means of documenting the "reasonable" costs compensable under the present cost recovery methodology for all forms of TRS.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives, specific to small businesses, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities." 5 U.S.C. 603(c)(1)–(4).

Adoption of Hamilton's proposed methodology for setting the interstate traditional TRS rate would eliminate the need to file the much more voluminous cost and demand data that providers presently must submit to the Fund administrator. Further, if the rate period is extended for more than one year, reporting requirements would be lessened by less frequent data filings with the Fund administrator. Therefore, the effect of the adoption of Hamilton's proposed methodology would be to lessen the reporting burden on small business.

In addition, adoption of a cost recovery methodology for VRS other than the current per minute compensation methodology could eliminate apparent dissatisfaction among the providers about the rate setting process and improve the predictability and efficiency in reporting the cost data and receiving the compensation for the provision of VRS. A seamless and efficient cost recovery methodology, including clear cost data submission guidelines, would lessen the reporting burden on small business.

Further, setting a standard of what and how the "reasonable" costs should be compensable under the present cost recovery methodology for all forms of TRS, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund, would provide guidance for the providers that may improve the predictability in the cost of providing TRS. It would also eliminate uncertainties with whether the costs submitted would be compensable or not. Eliminating uncertainties would lessen the reporting burden on small business.

The majority of TRS service is provided by large interexchange carriers and large incumbent local exchange carriers. Because the Commission believes that few small business entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternatives that would minimize significant economic impact on small businesses. Further, since the Commission believes the rules adopted pursuant to this proceeding will result in a more streamlined approach to administering TRS for all entities, including small entities, the Commission further persuaded that it would be premature to consider alternatives to the conferral of such benefits. However, the Commission invites comment on specific alternatives that may minimize the economic impact of the proposed rules on small businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, this Further Notice of Proposed Rulemaking is adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14901 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 177
Wednesday, September 13, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Afterschool Snacks Information in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

DATES: Written comments on this notice must be received or postmarked by November 13, 2006.

ADDRESSES: 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Melissa Rothstein, Chief, Program Analysis and Monitoring Branch, Child and Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594. Comments may also be submitted via fax to the attention of Melissa Rothstein at (703) 305–2879 or via e-mail to *melissa.rothstein@fns.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Melissa Rothstein at the address above or by telephone at 703–305–2590.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 226, Child and Adult Care Food Program.

OMB Numbers: 0584–0055.

Expiration Date: 3/31/2009.

Type of Request: Revision of currently approved information collection.

Abstract: FNS is amending the regulations for the Child and Adult Care Food Program (CACFP) at 7 CFR Part 226 to incorporate the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, which authorized certain afterschool care centers to be reimbursed for snacks served to at-risk children 18 years of age and younger. The rule is also being amended to establish the eligibility of at-risk afterschool care centers to serve free snacks to children who participate in afterschool programs. These changes were originally proposed by the Department in a rulemaking published on October 11, 2000 (65 FR 60502).

Due to the drop-in nature of many afterschool programs, the Department did not propose extensive reporting and recordkeeping requirements. In addition to application and eligibility records, an at-risk center must document daily attendance, number of snacks prepared or delivered, number of snacks served, and menus for each snack service. Consistent with the objective of keeping program administration minimal, the Department proposed only one additional reporting requirement—that at-risk centers report the total number of snacks served to eligible children. The proposed recordkeeping and reporting provisions are maintained in the final rule.

Affected Public: State, local or tribal Government, Individuals or Households, Business or other for-profit institutions, Not-for-profit institutions, and Federal government.

ESTIMATED ANNUALIZED BURDEN—7 CFR PART 226, OMB NO. 0584–0055

	Section	Annual number of respondents	Number responses per respondent	Hours per response	Total burden
State agency collects and maintains CACFP agreements, records received from applicant and participating institutions and documentation of administrative review and Program assistance activities, results and corrective actions.					
Total existing State agencies	7 CFR 226.6	54	1	1.9	103
Total proposed State agencies	7 CFR 226.6	54	1	2.4	130

ESTIMATED ANNUALIZED BURDEN—7 CFR PART 226, OMB NO. 0584–0055—Continued

	Section	Annual number of respondents	Number responses per respondent	Hours per response	Total burden
Independent centers and sponsoring organizations of centers must ensure that family size and income, menus, meal counts, enrollment, invoices and receipts, claims for reimbursement, day care licenses, CACFP applications, tax exempt certification (if applicable) are maintained on file for a period of at least 3 years. Sponsoring organizations of day care homes must ensure that menus, meal counts, attendance, enrollment, day care license, CACFP application and provider's family size and income records are maintained on file for a period of 3 years.					
Total existing Institutions	7 CFR 226.15	17,957	1	6.078	109,143
Total proposed Institutions	7 CFR 226.15	21,224	1	6.578	139,611
Institutions submit documentation sufficient to determine that each at-risk afterschool care center meets program eligibility or area eligibility requirements.					
Total existing institutions	7 CFR 226.6(b)	0	0	0	0
Total proposed institutions	7 CFR 226.6(b)	1,535	1	.3	461
Sponsoring organization or independent institution submits documentation to demonstrate that child care centers, outside school-hours care centers, at-risk afterschool care centers, day care homes, and adult day care centers are in compliance with licensing/approval criteria.					
Total existing sponsors/institutions	7 CFR 226.6(d)	12,742	1	.3	3,823
Total proposed sponsors/institutions	7 CFR 226.6(d)	21,224	1	.5	10,612
Total New Burden					37,745
Currently Approved Burden					5,779,223
Total Burden Hours Requested under #0584–0055.					5,816,968

Estimated Number of Respondents: 2,933,376.

Estimated Average Number of Responses per Respondent: 2.25.

Estimated Annual Responses: 6,624,039.

Estimated Average Hours Per Response: .87.

Estimated Total Annual Burden: 5,816,968.

Dated: September 5, 2006.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 06–7647 Filed 9–12–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville California, September 25, 2006. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: September 25, 2006.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: September 6, 2006.

Susan Jeheber-Matthews,

Deputy Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 06–7606 Filed 9–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit 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: U.S. Census Bureau.

Title: Survey of State Research & Development.

Form Number(s): State R&D Coordinator Web Collection; State R&D Agency Web Collection.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,378 hours.

Number of Respondents: 832.

Avg. Hours per Response: Coordinator collection—4 hours; Agency collection—1.5 hours.

Needs and Uses: The U.S. Census Bureau is requesting a new collection of state government research and development (R&D) expenditures that will be planned and supported jointly by the Census Bureau and the National Science Foundation (NSF).

This collection is authorized under Title 13, Sections 161 and 182 of the United States Code, which allow the Secretary of Commerce to collect and disseminate "data on * * * governmental receipts, expenditures * * * of states, counties, cities, and other governmental units." Title 15, Section 1525 of the United States Code also authorizes the Secretary of Commerce "upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce."

The NSF Act of 1950 includes a statutory charge to "provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government." Under the aegis of this legislative mandate, NSF and its predecessors have sponsored surveys of R&D since 1953. This new survey will expand the scope of R&D collections to include state governments, for which there are no established collection efforts.

NSF currently sponsors surveys of R&D activities of Federal agencies, higher education institutions, and private industries. The results of these existing surveys provide a consistent information base for government officials, industry professionals, and researchers to use in formulating public policy and planning in science and technology. These surveys allow for the analysis of current and historical trends in research and development in the U.S., as well as comparisons with other countries.

The existing NSF surveys, however, do not canvass R&D activities at the state government department or agency level. Collection of data from state government units via this new survey instrument will fill the void that currently exists about our Nation's R&D expenditures.

The Census Bureau, serving as collection agent, will employ a methodology similar to the one used to collect information from state and local governments on established censuses and surveys. This methodology involves identifying a central coordinator in each state who will assist Census Bureau staff in identifying appropriate state departments/agencies to survey. These state contacts will also be able to verify data responses and assist with nonresponse follow-up. The collection approach using a central state contact is used successfully at the Census Bureau in surveys of local school districts, municipal and county governments, and state government finances.

Items on the survey form will include expenditures by performer, source of funding, and type of R&D (*e.g.*, basic research). The scope of the collection includes amounts for all science and engineering outlays, including social science research. R&D capital expenditures, such as research lab construction and the purchase of buildings, will also be collected.

Legislators, policy officials, and researchers rely on statistics to make informed decisions about R&D investment at the Federal, State, and local level. These statistics are derived from the existing NSF sponsored surveys of Federal agencies, higher education institutions, and private industry. The total picture of R&D expenditures, however, is incomplete due to the lack of relevant and timely data from state governments. This survey will fill this void that currently exists.

State government officials and policy makers are likely to garner the most benefit from the results of this survey. Governors and legislatures need a reliable, comprehensive source of data to help in evaluating how best to attract the high-tech, R&D industries to their state. Officials will be able to evaluate their investment in R&D based on comparisons with other states. These comparisons will include the sources of funding, the type of R&D being conducted, and the actual performer of the work.

The information collected from the Survey of State R&D will be used at the Federal level to assess and direct investment in technology and economic issues. Congressional committees and the Congressional Research Service use results of the current R&D surveys extensively. Inquiries made to NSF by congressional staff concerning industry and academic data are well documented. In addition, officials from several Federal agencies make use of the existing data.

NSF will also use data from this survey in various publications produced about the state of R&D in the U.S. The Science and Engineering Indicators series, for example, is a biennial report mandated by Congress and describes quantitatively the condition of the country's R&D efforts. Results will also likely be included in the National Patterns of Research and Development Resources tabulations and in the Science and Engineering Indicators report.

Private industry, either individually or through trade associations, will also find these data useful, particularly statistics concerning funds transferred from state agencies to businesses. The current R&D surveys often receive prominent mention in industry publications such as Research and Development magazine, which recently released its "State of Global R&D" report.

The availability of state R&D data on the Internet will make this survey visible to several other users, as well. Media, university researchers, nonprofit organizations, and foreign government officials are also likely consumers of state R&D statistics. All users will utilize this information in an attempt to better understand the nation's R&D resources.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182; Title 15 U.S.C., Section 1525; NSF Act of 1950.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: September 7, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–15122 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Report of Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica M. Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5160 (or via the Internet at *erica.mary.filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a three year extension of a currently-approved collection of the Form C–404, Building Permits Survey. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are (a) Housing Units Authorized by Building Permits and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Census Bureau uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas. Building permits are public records so the information is not subject to disclosure restrictions.

II. Method of Collection

The Census Bureau collects this information by mail and electronically through files we download or receive on diskettes or via e-mail.

The survey universe is comprised of approximately 19,450 local governments that issue building permits. Monthly, we collect this information by mail for about 8,200 permit-issuing jurisdictions and electronically for about 625 jurisdictions. Annually, we collect this information by mail for the remaining 10,625 jurisdictions.

III. Data

OMB Number: 0607–0094.

Form Number: C–404.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 19,450.

Estimated Time per Response: 8 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 23 minutes for annual respondents who report by mail.

Estimated Total Annual Burden Hours: 17,568.

Estimated Total Annual Cost: $339,042.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 7, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–15116 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags ("PRCBs") from the People's Republic of China ("PRC") covering the period January 26, 2004, through July 31, 2005. We have preliminarily determined that sales have been made below normal value ("NV") by Crown Polyethylene Products (International) Ltd. ("Crown"), High Den Enterprises Ltd. ("High Den"), and Dongguan Nozawa Plastic Products Co. Ltd. and United Power Packaging Ltd. (collectively, "Nozawa").[1] If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR").

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: September 13, 2006.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

[1] The *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56634, 56635 (September 28, 2005) ("Initiation Notice") refers to Nozawa with the following names: Dongguan Nozawa Plastics and United Power Packaging (collectively "Nozawa"), Dongguan Nozawa Plastics, Dongguan Nozawa Plastic Co., Ltd., Dong Guan (Dong Wan) Nozawa Plastic Co., Ltd., Dongguan Nozawa Plastic Products Co., Ltd., United Power Packaging, United Power Packaging Limited, United Power Packaging Ltd.

Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION: On August 9, 2004, the Department published the antidumping duty order on PRCBs from the PRC. *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 48201 (August 9, 2004).

On August 1, 2005, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 44085 (August 1, 2005). In accordance with 19 CFR 351.213(b)(1), the following requests were made: (1) on August 12, 2005, Crown, a Chinese producer and exporter of the subject merchandise, requested that the Department conduct an administrative review of its sales; (2) on August 26, 2005, Nozawa, a Chinese producer and exporter of the subject merchandise, requested that the Department conduct an administrative review of its sales; (3) on August 29, 2005, Rally Plastics Co., Ltd. ("Rally"), Sea Lake Polyethylene Enterprise Ltd. ("Sea Lake"), Shanghai Glopack, Inc. ("Glopack"), and High Den, Chinese producers and/or exporters of the subject merchandise, requested that the Department conduct an administrative review of their sales; (4) on August 29, 2005, High Den also requested a new shipper review; (5) on August 30, 2005, Shanghai New Ai Lian Import & Export Co., Ltd. ("New Ai Lian"), a Hong Kong company that exported PRCBs that were manufactured in the PRC, requested that the Department conduct an administrative review of its sales to the United States; and, (6) on August 31, 2005, Ampac Packaging (Nanjing) Co. ("Ampac") requested that the Department conduct a new shipper review and, in the alternative, an administrative review of its sales during the POR. On September 20, 2005, High Den withdrew its request for a new shipper review of its sales to the United States during the POR.

On September 28, 2005, the Department initiated this administrative review with respect to Nozawa, Crown, Rally, Sea Lake, Glopack, High Den, and New Ai Lian. *See Initiation Notice.*

On September 30, 2005, the Department issued a letter denying Ampac's request for a new shipper review and stating that it would conduct an administrative review of Ampac's sales during the POR. The Department issued antidumping duty questionnaires to all of the above–named respondents on October 21, 2005. On October 25, 2005, the Department amended its initiation to include Ampac, which was inadvertently omitted from the September 28, 2005, initiation notice. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005).

On November 11, 2005, Nozawa, High Den, Glopack, Sea Lake and Crown submitted Section A questionnaire responses ("AQRs"). On November 16, 2005, New Ai Lian withdrew its request for an administrative review. On November 22, 2005, Rally withdrew its request for an administrative review. On November 29, 2005, Nozawa submitted comments arguing that it was unnecessary for its U.S. affiliate, Packaging Solutions Inc. ("PSI"), to submit Section E information concerning further manufacturing that occurred in the United States during the POR.

On December 19, 2005, the Department requested the Office of Policy to provide a list of surrogate countries for this review. *See* Memorandum to Ron Lorentzen, Acting Director, Office of Policy, through Wendy Frankel, Director, AD/CVD Enforcement, from Matthew Quigley, International Trade Compliance Analyst, "Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Surrogate Country Selection" (December 19, 2005). On December 20, 2005, the Office of Policy issued its list of surrogate countries. *See* the Memorandum from Ron Lorentzen, Director, Office of Policy, to Wendy Frankel, Director, China/NME Group, Office 8, "Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags ("Bags") from the People's Republic of China ("PRC"): Request for a List of Surrogate Countries" (December 20, 2005) ("Policy Memorandum").

On December 23, 2005, High Den, Crown, Glopack, Sea Lake and Nozawa submitted Sections C and D questionnaire responses ("CQR" and "DQR"). On the same date, Crown submitted a sales and factors of production reconciliation under a separate cover, and Nozawa submitted a Section E questionnaire response ("EQR"). On December 27, 2005, Sea Lake and Glopack withdrew their requests for an administrative review.

On January 6, 2006, a domestic interested party, the Polyethylene Retail Carrier Bag Committee ("PRCB Committee") and its individual members, Hilex Poly Co., LLC and Superbag Corp., requested that the Department verify Crown, High Den and Nozawa. On February 23, 2006, Ampac withdrew its request for an administrative review.

The Department issued supplemental questionnaires to Crown and High Den on March 15, 2006. On March 24, 2006, the PRCB Committee, Crown, and High Den provided information concerning the appropriate surrogate values to use in valuing respondents' factors of production ("FOP"). No other parties submitted information concerning the valuation of respondents' FOPs during the POR.

On April 12, 2006, High Den and Crown submitted supplemental questionnaire responses ("SQRs"). On April 14, 2006, the Department issued a supplemental questionnaire to Nozawa. On April 21, 2006, the PRCB Committee submitted comments concerning the surrogate country selection. No other interested party submitted surrogate country selection comments. The PRCB Committee, on April 28, 2006, submitted an allegation that High Den's sales to the United States during the POR were not *bona fide*.

On April 27, 2006, the Department published a notice extending the deadline for the preliminary results of this administrative review. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 24839 (April 27, 2006). On May 24, 2006, the Department published a partial rescission of the instant administrative review with respect to Sea Lake, Glopack, Shanghai New Ai Lian, Rally and Ampac. *See Polyethylene Retail Carrier Bags From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 29915 (May 24, 2006).

On June 5, 2006, Nozawa submitted its SQR and on June 6, 2006, it provided revisions to that submission. On July 17, 2006, the Department issued a third supplemental questionnaire to High Den. On July 26, 2006, Nozawa provided the publicly available audited financial statements of four Indian producers of identical or comparable merchandise which it proposed be used as the basis of surrogate financial ratios in the calculation of the antidumping duty margin. On August 7, 2006, the PRCB Committee provided publicly available factual information concerning the Indian producers referenced in Nozawa's July 26, 2006, submission. In addition, on August 7, 2006, Nozawa provided additional information concerning the source and public availability of the financial statements

provided in its July 26, 2006, submission.

On August 23, 2006, the Department further extended the deadline for the preliminary results of this administrative review. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Review*, 71 FR 49417 (August 23, 2006).

Period of Review

The POR is January 26, 2004, through July 31, 2005.

Scope of the Order

The merchandise subject to this antidumping duty order is PRCBs which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy ("NME") country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See e.g., Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review* 71 FR 26736, 26739 (May 8, 2006) (unchanged in final results) and *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China* 70 FR 77121, 77124 (December 29, 2005) (unchanged in final determination). No interested party in this case has contested this treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Preliminary Results of the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Surrogate Value Memorandum" (August 31, 2006) ("Surrogate Value Memorandum").

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Policy Memorandum. Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that: 1) India is at a level of economic development comparable to that of the PRC; and 2) India is a significant producer of comparable merchandise, and 3) India provides the best opportunity to use quality, publicly available data to value the FOPs. *See* Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Antidumping Administrative Review of Polyethylene Retail Carrier Bags: Selection of a Surrogate Country," (August 31, 2006) ("Surrogate Country Memorandum").

The Department used India as the primary surrogate country and, accordingly, has calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. *See* Surrogate Country Memorandum and Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of the preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005) (unchanged in final results); and *Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty*

[2] Until July 1, 2005, these products were classifiable under HTSUS 3923.21.0090 (Sacks and bags of polymers of ethylene, other). *See Harmonized Tariff Schedule of the United States (2005)- Supplement 1 Annotated for Statistical Reporting Purposes Change Record - 17th Edition - Supplement 1*, available at http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0510/0510chgs.pdf.

Administrative Review and Intent to Rescind in Part, 70 FR 76755, 76758 (December 28, 2005) (unchanged in final results).

To determine whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585, 22587 (May 6, 1991) (''*Sparklers*''); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this test, exporters in NME countries receive separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (''*de jure*'') and in fact (''*de facto*'').

We have considered whether the companies under review are eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725,14727–28 (March 20, 1995) (unchanged in final determination).

Crown, High Den and Nozawa each provided company–specific separate–rate information and stated that each met the standards for the assignment of separate rates. Crown, High Den and Nozawa all reported that they are privately owned trading companies based in Hong Kong, and that their suppliers are wholly foreign–owned enterprises. Therefore, an additional separate–rates analysis is not necessary to determine whether Crown's, High Den's and Nozawa's export activities are independent from government control. *See e.g., Brake Rotors From the People's Republic of China: Preliminary Results of the Tenth New Shipper Review*, 69 FR 30875, 30876 (June 1, 2004) (unchanged in final results); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000) (unchanged in final results of review); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996) (''*Bicycles*''). Further, the producers in the PRC are wholly owned by Crown, High Den and Nozawa, respectively, and are incorporated in the PRC as wholly foreign–owned companies. See Crown's QR at 2–6; High Den's AQR at 2–5; and Nozawa's AQR at 3–11.

Date of Sale

Section 351.401(i) of the Department's regulations states that:

> in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also, Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). No party has suggested the use of a date of sale other than the invoice date. *See* Crown's CQR at C–10; High Den's CQR at C–15; and Nozawa's CQR at C–12. Therefore, pursuant to 19 CFR 351.401(i), we will use the invoice date as the date of sale for all companies in this review.

Bona Fide Sales

In response to allegations by the PRCB Committee on April 28, 2006, we examined the record of this review to determine whether the sales made by High Den during the POR were bona fide. Concurrent with this notice, we are issuing a memorandum detailing our analysis of the bona fides of High Den's sales to the United States during the POR. *See* Memorandum from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, to Wendy J. Frankel, AD/CVD Operations, Office 8 ''Polyethylene Retail Carrier Bags from the People's Republic of China: *Bona Fide* Nature of the Sales in the 2004–2005 Antidumping Duty Administrative Review of High Den Enterprises, Ltd.'' (August 31, 2006) (''*Bona Fide* Sales Memorandum'').

In evaluating whether or not a sale is commercially reasonable and, therefore, *bona fide*, the Department has considered, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was at arm's length. *See e.g., Tianjin Tiancheng Pharmaceutical Co., Ltd. v. U.S.*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (''*TTPC*''), citing *American Silicon Technologies. v. U.S.*, 110 F. Supp. 2d 992,995 (CIT 2000). However, the analysis is not limited to these factors alone. The Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. While some bona fides issues may share commonalities across various Department cases, each one is company–specific and may vary with the facts surrounding each sale. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at 20. The weight given to each factor considered will depend on the circumstances surrounding the sale. *See TTPC*, 366 F. Supp. 2d at 1263.

As discussed in detail in the *Bona Fide* Sales Memorandum, the Department based its preliminary determination that the sales made by High Den were *bona fide* on the following: (1) the prices of High Den's sales were within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) the quantity of High Den's sales were within the range of the quantities of other entries of subject merchandise from the PRC into the United States during the POR; (3) High Den's sales were made to an unaffiliated party at arm's length; and (4) there is no record evidence that indicates that High Den's sales were not made based on commercial principles.

Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds

information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 782(c)(1) of the Act provides that if an interested party, promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In section C (IV) (Field 2) of the November 10, 2005, questionnaire, the Department requested that Nozawa:

> Assign a control number to each unique product reported in the section C sales data file. Identical products should be assigned the same control number in each record in every file in which the product is referenced. Each unique combination of product characteristics based only on fields 3.1 - 3.n should be assigned a unique control number. If the product is further manufactured in the United Sates, report the control number of the product *imported*, not the product sold.

On December 23, 2005, Nozawa submitted a questionnaire response to section C and responded that the control number ("CONNUMs") and physical characteristics were "N/A" for some sales. On April 14, 2006, the Department issued a supplemental questionnaire requesting that Nozawa provide CONNUMs and physical characteristics for all sales. One June 5, 2006, Nozawa reported CONNUMs with uniquely defined physical characteristics for all sales but did not report factors of production (FOP) data for all CONNUMs. On July 26, 2006, the Department issued its second supplemental questionnaire requesting that Nozawa report FOP data for all CONNUMs.

In the narrative of Nozawa's August 7, 2006, second supplemental questionnaire response ("SSQR"), Nozawa stated that it had "revised the FOP databases so that they contain matching CONNUMs for all sales reported in the combined U.S. sales database" SSQR at 1. However, instead of providing the FOPs that had previously been missing (*i.e.* for the CONNUM's the Department had identified in the second supplemental questionnaire), Nozawa collapsed multiple CONNUMs in the U.S. sales database, thereby matching sales of products that should fall under different CONNUMs to single CONNUMs in the FOP database. Specifically, in the U.S. sales database, Nozawa collapsed 115 unique CONNUMs into 53 CONNUMS. Therefore, the Department finds that 1) Nozawa has failed to submit certain information that has been requested; 2) Nozawa also failed to submit information in the form and manner requested; and 3) Nozawa did not, as required by section 782(c)(1) of the Act, inform the Department that it was having difficulties reporting the information in the form and manner requested, nor did it suggest an alternative method of reporting to the Department. Instead Nozawa altered the database in a manner which is inconsistent with the Department's instruction, and which misidentifies the CONNUMs for at least 62 products. Consequently, the Department cannot use the submitted information without undue difficulties. Specifically, we find that, we are unable to identify which products within the collapsed CONNUMs are matched to appropriate FOP data and we have no FOP data for at least 62 CONNUMs. Nozawa has significantly impeded this proceeding because it has prevented the Department from calculating a dumping margin based on FOP data for each product with unique physical characteristics.

Therefore, pursuant to section 782(e) of the Act, the Department is not using the information in Nozawa's SSQR, with respect to these CONNUMs, as a basis for determining Nozawa's preliminary antidumping duty margin, and pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, the Department has determined to apply partial facts available for all U.S. sales for which Nozawa failed to report uniquely defined control numbers.

Use of Adverse Inferences

Section 776(b) of the Act provides that, upon having determined to apply facts available pursuant to the statutory requirements of the Act, the Department may use adverse inferences in selecting among the facts otherwise available if the Department determines that the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The U.S. Court of Appeals for the Federal Circuit has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do." *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed Cir. 2003) (*Nippon Steel*).

> While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.

Id., at 1382.

The Department has determined that Nozawa did not act to the best of its ability because it neither reported uniquely defined CONNUMs, although it had the ability to do so, nor notified the Department that it would not report uniquely defined CONNUMs.[3] The ability to report uniquely defined CONNUMs was within Nozawa's control as evidenced by the fact that it reported the physical characteristics of each sale. In this case, CONNUMs are created by combining the quantitative values which represent 13 distinct physical characteristics. Nozawa's failure to create CONNUMs for these products, while reporting physical

[3] *See* November 10, 2005, Questionnaire, General Instructions.

characteristics for all products, demonstrates that Nozawa did not do the maximum it was able to do in responding to the Department's questionnaires. *See Nippon Steel*, 337 F.3d at 1382; *see also, Gourmet Equip. Corp. v. United States*, 24 CIT 572, 574 (2000) (holding that the respondent must provide the Department with the most accurate, credible, and verifiable information); *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008 (CIT 1992) (finding that ultimately the burden of creating an adequate record lies with the respondents not the Department). Furthermore, Nozawa did not report FOP data for the merchandise for which it failed to report uniquely defined CONNUMs. Again, this data was clearly within Nozawa's control.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous administrative review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (Feburary 23, 1998). The Department's practice also ensures that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. In order to effectuate the purposes of AFA and in accordance with section 776(b), as AFA for the preliminary results, the Department is applying the highest rate determined in the less than fair value investigation to Nozawa's sales which lack uniquely defined CONNUMs.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Sess. Vol.1 at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

For the preliminary results, in accordance with section 776(c) of the Act, we corroborated our AFA margin using information submitted by Crown and Nozawa. *See* Memorandum to the File from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, China/NME Group, "2004–2005 Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Corroboration of Adverse Facts Available" (August 31, 2006), regarding the corroboration of the AFA rate. We found that the margin of 77.57 percent has probative value. Accordingly, we find that the rate of 77.57 percent is corroborated within the meaning of section 776(c) of the Act.

Normal Value Comparisons

To determine whether sales of PRCBs to the United States by Crown, High Den and Nozawa were made at less than NV, we compared export price ("EP") or constructed export price ("CEP") to NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice, pursuant to section 771(35) of the Act. For High Den, we calculated per–unit cash deposit and assessment rates rather than *ad valorem* rates. Due to the proprietary nature of this information, please see the Memorandum from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, to Wendy J. Frankel, AD/CVD Operations, Office 8 "Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: High Den Enterprises, Ltd." (August 31, 2006).

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772 (c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of Nozawa's sales because Nozawa sold its subject merchandise to its affiliated companies in the United States, Kal Pac Corporation ("Kal Pac") and PSI, which, in turn, made the first sales of subject merchandise to unaffiliated U.S. customers. In addition, Nozawa reported that PSI made sales of subject merchandise which it further manufactured in the United States.

In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for early payment discounts, rebates, commissions, foreign inland freight from the plant to the port of exportation, international freight, marine insurance, U.S. brokerage and handling, U.S. duty, devanning, and inland freight from the warehouse to the unaffiliated U.S. customer. In accordance with section 772(d)(1) of the Act, the Department additionally deducted credit expenses, inventory carrying costs and U.S. indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. We calculated Nozawa's credit expenses and inventory carrying costs based on the Federal Reserve short–term rate because Nozawa reported that neither Kal Pac nor PSI had short–term borrowing during the POR. We also deducted an amount for further–manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act. To calculate the cost of further manufacturing in the United States, we relied on PSI's reported cost of materials, labor, and overhead, general and administrative expenses ("G&A") and financial expenses of the further manufactured materials. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. We also added 11 types of miscellaneous revenue to the gross unit price. *See* Memorandum to the File from Matthew Quigley, International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Polyethylene

Retail Carrier Bags from the People's Republic of China: Dongguan Nozawa Plastic Products Co. Ltd. and United Power Packaging (collectively, "Nozawa")" (August 31, 2006) ("Nozawa Preliminary Analysis Memorandum").

Export Price

Because Crown, High Den and Nozawa sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a CEP methodology is not otherwise indicated, we have used EP for these transactions in accordance with section 772(a) of the Act.

We calculated EP based on the FOB or delivered price to unaffiliated purchasers for Crown, High Den and Nozawa. From this price, we deducted amounts for foreign inland freight, brokerage and handling, and, where applicable, ocean freight and air freight, discounts and rebates pursuant to section 772(c)(2)(A) of the Act. *See* Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Crown Polyethylene Products (International) Ltd. ("Crown")" (August 31, 2006) ("Crown Preliminary Analysis Memorandum"); Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Preliminary Results of the 2004–2005 Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: High Den Enterprises Ltd. ("High Den")" (August 21, 2006) ("High Den Preliminary Analysis Memorandum"); and Nozawa Preliminary Analysis Memorandum.

Surrogate Values for Expenses Incurred in the PRC for U.S. Sales

No party provided surrogate values for domestic brokerage and handling on the record of this review. Therefore, to calculate the surrogate value for domestic brokerage and handling, the Department used the information available to it contained in the public version of two questionnaire responses placed on the record of separate proceedings. The first source was December 2003–November 2004 data contained in the public version of Essar Steel's February 28, 2005, questionnaire response submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in final results); and *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477, (July 17, 2006). This value was averaged with the February 2004–January 2005 data contained in the public version of Agro Dutch Industries Limited's ("Agro Dutch") May 24, 2005, questionnaire response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006); *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (utilizing these same data). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation using the Indian Wholesale Price Index ("WPI") as published on the Reserve Bank of India ("RBI") website available at www.rbi.org.in. Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See* Surrogate Value Memorandum at 8 and Attachment XII.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at http://www.infreight.com. The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. Because there are no known Indian air freight providers that ship merchandise from the PRC to the United States, we valued air freight, where applicable, using the rates published in the UPS website: http://www.ups.com. Because the surrogate values for air freight were derived from U.S. sources, we adjusted them for inflation using the U.S. Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, available on http://data.bls.gov. This is consistent with the methodology employed in *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) ("Tables and Chairs") and accompanying Issues and Decision Memorandum at Comment 6. See Surrogate Value Memorandum at 7–8 and Attachment XIII.

We compared individual EP and CEP transactions to NV, in accordance with section 777A(d)(2) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders prices and the calculation of production costs invalid under our normal methodology. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs for PRCBs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by–products, and packing.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market–economy country and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also, Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market–based prices to value certain FOPs). Where a portion of the input is purchased from a market–economy supplier and the remainder from an NME supplier, the Department will normally use the price paid for the inputs sourced from market–economy suppliers to value all of the input, provided the volume of the market–economy inputs as a share of total purchases from all sources is "meaningful." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997); *Shakeproof v. United States*, 268 F. 3d 1376, 1382 (Fed. Cir. 2001). *See also* 19 CFR 351.408(c)(1).

With regard to both the Indian import–based surrogate values and the market–economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. *See Omnibus Trade and Competitiveness Act of 1988 ("OCTA")*, Conference Report to Accompany H.R. 3, H. Report No. 100–578, 590–91, 1988 U.S. Code and Adm. N. 1547, 1623 (1988) ("H.R. Rep. 100–578 (1988)"); *Tables and Chairs* at Comment 6; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that India, Indonesia, South Korea, and Thailand maintain broadly available, non–industry-specific export subsidies, and it is reasonable to infer that exports to all markets from these countries may be subsidized. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in final results); and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004).

We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–578 (1988). Rather, the Department bases its decision on information that is available to it at the time it is making its determination. *Id.* Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See* Crown Preliminary Analysis Memorandum, High Den Preliminary Analysis Memorandum and Nozawa Preliminary Analysis Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States. Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and used in the World Trade Atlas, available at http://www.gtis.com/wta.htm ("WTA"). The WTA data are reported in rupees and are generally contemporaneous with the POR. *See also*, Surrogate Value Memorandum at Attachment V. Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian WPI as published on the RBI website, available at www.rbi.org.in. We further adjusted these prices to account for freight costs incurred between the supplier and respondent. For a complete description of the factor values we used, see the Surrogate Value Memorandum.

Crown, High Den and Nozawa reported that a meaningful portion of their purchases of the following inputs were sourced from market–economy countries and paid for in market–economy currencies: high–density polyethylene ("HDPE') resin, low–density polyethylene ("LDPE") resin, linear low density ("LLD") resin, master batch, master batch additive, pigment, solvent, varnish, matt paste, hot stamps, black ink, color ink, and cardboard inserts. *See* Crown's DQR at D–4 and Exhibit 5; High Den's DQR at D–4 and Exhibit D4–1; and Nozawa's SQR at 37 and Exhibit D–17. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by respondents for inputs purchased from a market–economy supplier and paid for in a market–economy currency. However, we have disregarded any market–economy prices that we have reason to believe or suspect may be subsidized. Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. *See* Surrogate Value Memorandum, Crown Preliminary Analysis Memorandum, High Den Preliminary Analysis Memorandum and Nozawa Preliminary Analysis Memorandum.

To value diesel oil, we used per–kilogram values obtained from Bharat Petroleum, an Indian petroleum company, published in December 2003, and used in *Folding Metal Tables and Chairs from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 39726, 39732 (July 11, 2005) (unchanged in the final). We also made adjustments to account for inflation and freight costs incurred between the supplier and respondent.

To value electricity, we used the 2000 electricity price data from International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2006), available at http://www.eia.doe.gov/emeu/international/elecprii.html, adjusted for inflation.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised November 2005) (available at http://ia.ita.doc.gov/wages). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2003*, ILO, (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent.

For factory overhead, SG&A, and profit values, we used information from A.P. Polyplast Pvt. Ltd., Arvind Chemi Synthetics Pvt. Ltd., Jain Raffia Industries, and Kuloday Technopak Pvt. Ltd. for the year ending March 31, 2005. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum for a full discussion of the calculation of these ratios.

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and respondent.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin (Percent)
Crown	8.63
Nozawa	12.12

Manufacturer/Exporter	Margin (U.S. dollars per bag)
High Den	0.02

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 42 days after the date of publication of this notice. *See* 19 CFR 351.310(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue, as appropriate, appraisement instructions directly to CBP within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b), we calculated exporter/importer- (or customer-) specific assessment rates for the merchandise subject to this review. For Crown and Nozawa, where the respondent has reported entered values, we calculated importer- (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to the importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period. For Crown and Nozawa, where we do not have entered values for all U.S. sales and for all of High Den's sales, we calculated a per–unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates based on the estimated entered value. Where an importer- (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following cash 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, as provided for by section 751(a)(2)(C) of the Act: (1) for the above–listed respondents, which have a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 77.57 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–15214 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090806A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics off the Southern Atlantic States

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Dr. William Patterson and Captain Ben Hartig. If granted, the EFP would authorize the applicants, with certain conditions, to collect limited numbers of undersized and out-of-season king mackerel in South Atlantic Federal waters off the coast of Florida. The purpose of the study is to estimate temporal and spatial variability between migratory king mackerel groups in the winter mixing zone off the southeast coast of Florida.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on October 13, 2006.

ADDRESSES: Comments on the application may be sent via fax to 727–824–5308 or mailed to: Sarah DeVido, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *Sarah.DeVido@noaa.gov*. Include in the subject line of the e-mail document the following text: Comment on Patterson-Hartig EFP Application. The application and related documents are available for review upon written request to the address above or the e-mail address below.

FOR FURTHER INFORMATION CONTACT: Sarah DeVido, 727–824–5305; fax 727–824–5308; e-mail: *Sarah.DeVido@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of the cooperative research program (NMFS Cooperative Research Program Grant NA06NMF45400601). The Cooperative Research Program is a means of involving commercial and/or recreational fishermen in the collection of fundamental fisheries information. Resource collection efforts support the development and evaluation of fisheries management and regulatory options.

The proposed collection for scientific research involves activities otherwise prohibited by regulations implementing the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the South Atlantic Region. The applicants require authorization to harvest and possess undersized and out-of-season king mackerel for scientific research activities during the period from October 1, 2006, through July 31, 2008. Specimens would be collected from Federal waters off the southeast coast of Florida by trolling artificial lures and rigged dead baits during the specified sampling period. Sampling would occur year round when migratory fish are present, collecting up to 500 fish per year. Biological samples would be extracted from the specimens. Data collections for this study will support estimations of growth and age (from otolith thin sections), analyses of reproductive biology (from gonadal thin sections), and population and mixing dynamics (from shape and chemical analyses of otoliths).

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: The use of only artificial lures and rigged dead baits during trolling sampling trips; and prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, or over artificial reefs, without additional authorization. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

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

Dated: September 8, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–15192 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081606A]

Atlantic Highly Migratory Species; U.S. Atlantic Swordfish Fishery Public Meetings

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

ACTION: Notice; additional public meeting.

SUMMARY: On August 31, 2006, NMFS published in the **Federal Register** a notice announcing five public meetings to obtain from U.S. Atlantic swordfish fishery participants and other members of the public recommendations regarding potential management measures so as to fully harvest the swordfish quota allocated to the United States by the International Commission for the Conservation of Atlantic Tunas (ICCAT). In response to requests from swordfish fishery participants in South Florida, NMFS is adding an additional meeting in Fort Lauderdale, FL, in September 2006.

DATES: The public meeting will be held on September 27, 2006, from 7–9 p.m.

ADDRESSES: The public meeting will be held at the Broward County Main Library, 100 South Andrews Avenue, Fort Lauderdale, FL 33301.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly at (301) 713–2347.

SUPPLEMENTARY INFORMATION: A notice announcing five public meetings (in Houma, LA; Manahawkin, NJ; Peabody, MA; Manteo, NC; and Panama City, FL) to obtain recommendations regarding potential management measures so as to fully harvest the Atlantic swordfish quota allocated to the United States by ICCAT was published in the **Federal Register** on August 31, 2006 (71 FR 51803). This notice announces an additional meeting.

Background

The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA implement the recommendations of ICCAT. In the last several years, the U.S. Atlantic swordfish fishery has not fully harvested the available quota allocated by ICCAT. The adjusted 2005 North Atlantic swordfish total quota was 6,336.1 mt dw, which included a baseline quota of 2,937.6 and a quota carry-over of 3,398.5 mt dw. The total U.S. North Atlantic quota allocation for the 2006 fishing year is 2,937.6 mt dw, and the carry-over is yet to be determined. NMFS anticipates that the pending September 2006 stock assessment may identify the North Atlantic swordfish stock as fully rebuilt. Fishermen and others have asked NMFS to assist in revitalizing this fishery. Also, at its November 2006 meeting ICCAT will likely review swordfish management measures and quota allocations. Therefore, NMFS is considering potential management measures for the U.S. Atlantic swordfish fishery that would address factors limiting the ability to catch the allocated quota, and to aid in revitalizing the fishery so that swordfish are harvested in a sustainable and economically viable manner, while bycatch is minimized to the extent practicable. At the September 27, 2006 public meeting NMFS wishes to obtain recommendations from swordfish fishery participants and other members of the public regarding potential management measures for the fishery to fully harvest the available quota.

Special Accommodations

The meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sari Kiraly at (301) 713–2347, no later than September 20, 2006.

Dated: September 7, 2006.

James P. Burgess,

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

[FR Doc. E6–15197 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patemt amd Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit 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: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures.

Form Number(s): None.

Agency Approval Number: 0651–0024.

Type of Request: Revision of a currently approved collection.

Burden: 17,297 hours annually.

Number of Respondents: 15,382 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately ten minutes (0.17 hours) to one hour and 20 minutes (1.33 hours) to gather the necessary information, prepare the sequence listing, and submit it to the USPTO, depending on whether the listing is submitted on paper, on compact disc (CD), or electronically.

Needs and Uses: Patent applications that contain nucleotide and/or amino acid sequence disclosures must include a copy of the sequence listing in accordance with the requirements in 37 CFR 1.821–1.825. Applicants may submit sequence listings for both U.S. and international patent applications. The USPTO uses the sequence listings during the examination process to determine the patentability of the associated patent application. Sequence listings are also disclosed as part of the published application or issued patent. Applicants use sequence data when preparing biotechnology patent applications and may also search sequence listings after publication.

Affected Public: Businesses or other for-profits, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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 "0651–0024 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 October 13, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 6, 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. E6–15138 Filed 9–12–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Navy Air-to-Ground Training at Avon Park Air Force Range, FL

AGENCY: Department of the Air Force, Headquarters Air Combat Command.

ACTION: Record of Decision.

SUMMARY: On August 21, 2006 the United States Air Force signed the Record of Decision (ROD) for the Proposed Navy Air-to-Ground Training at Avon Park Air Force Range, Florida, and has selected Alternative 6 (Utilize Alpha Plus Impact Area for High Explosive Delivery) for implementation. This ROD states the Air Force decision to allow the Navy to conduct all components of air-to-ground ordnance delivery and training at integrated and sustainment levels of Fleet Forces Command's Fleet Readiness Training Program at APAFR, Florida. The proposed action includes an increase in current common elements training and adds air-to-ground readiness training, including delivery of inert and high explosive (HE) ordnance from the Navy's tactical jets. Alternative 6 was selected because it provides the best balance between readiness training and environmental concerns. The Air Force participated as a cooperating agency in preparation of the Navy Final Environmental Impact Statement (FEIS) and ROD, which the AF ROD incorporated by reference. The Navy FEIS and ROD provide detailed information on the Navy proposal and the selection of alternatives that were considered by the Air Force in reaching its decision. The EIS and ROD also describe in detail impacts of the proposed action to the human and the natural environment in 13 resource areas and measures that will be taken to mitigate those impacts. The Air Force decision was based on matters discussed in the ROD, the FEIS, inputs from the public, inputs from regulatory agencies, and other relevant factors. The FEIS was made available on November 18, 2005 in the **Federal Register:** (Vol. 70, Number 222, page 69967) with a waiting period ending December 18, 2005. The ROD documents only the decision of the Air Force, as a cooperating agency, with regard to the proposed Navy actions analyzed in the FEIS.

FOR FURTHER INFORMATION CONTACT: Headquarters Air Combat Command, Integrated Planning Office, 129 Andrews St, Suite 103 Langley AFB VA 23665 or call (757) 764–9197.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–15183 Filed 9–12–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 13, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New

Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 7, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Application for European Union-United States Atlantis Program (formerly callled Community-United States Cooperation Program).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 1500.

Abstract: The EU-U.S. Atlantis Program will support new types of cooperation in curriculum development and student exchange between the U.S. and the European Union.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3179. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *SCHUBARTICDocketMgr@ed.gov*; 202–245–6566. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–15115 Filed 9–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP06–533–000, et al.]

Notice of Proposed Changes in FERC Gas Tariff

September 7, 2006.

	Docket No.
Algonquin Gas Transmission LLC	RP06–533–000
ANR Pipeline Company	RP06–531–000
ANR Storage Company	RP06–530–000
Blue Lake Gas Storage Company	RP06–532–000
Central Kentucky Transmission Company	RP06–549–000
Chandeleur Pipe Line Company	RP06–527–000
Columbia Gas Transmission Corporation	RP06–546–000
Columbia Gulf Transmission Company	RP06–552–000
Crossroads Pipeline Company	RP06–553–000
Dauphin Island Gathering Partners	RP06–550–000
Destin Pipeline Company, L.L.C	RP06–545–000
East Tennessee Natural Gas, LLC	RP06–538–000
Equitrans, L.P	RP06–514–000
Florida Gas Transmission Company, LLC	RP06–558–000
Gas Transmission Northwest Corporation	RP06–578–000
Granite State Gas Transmission, Inc	RP06–551–000
Great Lakes Gas Transmission Limited Partnership	RP06–567–000
Guardian Pipeline, L.L.C	RP06–562–000
Gulf South Pipeline Company, LP	RP06–508–000
Gulfstream Natural Gas System, L.L.C	RP06–536–000
Horizon Pipeline Company, L.L.C	RP06–458–000
Iroquois Gas Transmission System, L.P	RP06–547–000
KO Transmission Company	RP06–523–000
Maritimes & Northeast Pipeline, L.L.C	RP06–535–000
MarkWest New Mexico L.P	RP06–580–000
Midwestern Gas Transmission Company	RP06–566–000
MIGC, Inc	RP06–432–000
National Fuel Gas Supply Corporation	RP06–576–000
Natural Gas Pipeline Company of America	RP06–459–000
North Baja Pipeline, LLC	RP06–577–000
Northern Border Pipeline Company	RP06–563–000
Northern Natural Gas Company	RP06–559–000
Ozark Gas Transmission, L.L.C	RP06–586–000
Paiute Pipeline Company	RP06–522–000
Panhandle Eastern Pipe Line Company, LP	RP06–557–000
Panther Interstate Pipeline Energy, LLC	RP06–581–000

	Docket No.
Petal Gas Storage L.L.C	RP06–561–000
Portland Natural Gas Transmission System	RP06–585–000
Questar Pipeline Company	RP06–507–000
Questar Southern Trails Pipeline Company	RP06–526–000
Sabine Pipe Line LLC	RP06–528–000
SCG Pipeline, Inc	RP06–565–000
Sea Robin Pipeline Company	RP06–555–000
Southern LNG, Inc	RP06–544–000
Southern Natural Gas Company	RP06–543–000
Southwest Gas Storage Company	RP06–554–000
Southwest Gas Transmission Company A Limited Partnership	RP06–524–000
Tennessee Gas Pipeline Company	RP06–541–000
Texas Eastern Transmission, LP	RP06–529–000
Texas Gas Transmission, LLC	RP06–516–000
Trailblazer Pipeline Company	RP06–460–000
Transwestern Pipeline Company, LLC	RP06–574–000
Trunkline Gas Company	RP06–564–000
Trunkline LNG Company, LLC	RP06–556–000
Tuscarora Gas Transmission Company	RP06–510–000
Vector Pipeline L.P	RP06–548–000
Venice Gathering System, L.L.C	RP06–518–000
Viking Gas Transmission Company	RP06–568–000
WestGas InterState, Inc	RP06–587–000
Williston Basin Interstate Pipeline Company	RP06–560–000

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, pursuant to section 154.402 of the Commission's Regulations to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to be applied to rates for recovery of 2006 Annual Charges pursuant to Order No. 472, in RM87–3–000. The proposed effective date of the tariff sheets is October 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Due to the large number of pipelines that have filed to comply with the Annual Charge Adjustment Billing, the Commission is issuing this single notice of the filings. The filings received are reflected in the caption of this notice.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15180 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

August 29, 2006.

	Docket No.
ALLETE, Inc	PH06–49–000
AOG Corporation	PH06–50–000
American States Water Company	PH06–51–000
Consolidated Edison, Inc	PH06–52–000
CH Energy Group	PH06–53–000
Energy East Corporation	PH06–54–000
RGS Energy Group, Inc	PH06–55–000
Energen Corporation	PH06–56–000
UGI Corporation	PH06–57–000
Puget Energy, Inc	PH06–58–000
HH–SU Investments L.L.C	PH06–59–000

	Docket No.
Cap Rock Energy Corporation	PH06–60–000
Peoples Energy Corporation	PH06–61–000
Peoples Energy Corporation	PH06–62–000
Duquesne Light Holdings, Inc	PH06–63–000
Milliken & Company	PH06–64–000
Intermountain Industries, Inc	PH06–65–000
TXU Corp	PH06–66–000
Cleco Corporation	PH06–67–000
KeySpan Energy Corporation	PH06–68–000
KeySpan New England, LLC	PH06–69–000
WPS Resources Corporation	PH06–70–000

Take notice that in July 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15142 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–102–000]

American Electric Power Service Corporation; Notice of Filing

September 7, 2006.

Take notice that on August 28, 2006, American Electric Power Service Corporation filed a petition of declaratory order, pursuant to rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15173 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–144]

ANR Pipeline Company; Notice of Negotiated Rate Filing

August 29, 2006.

Take notice that on August 3, 2006, ANR Pipeline Company (ANR) tendered for filing and approval two negotiated rate service agreements between ANR and Midland Cogeneration Venture Limited Partnership. ANR requests the Commission to accept and approve the agreements to be effective on April 1, 2007, and April 1, 2008, respectively.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15140 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–570–000]

ANR Pipeline Company; Notice of Tariff Filing

September 6, 2006.

Take notice that on August 31, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2006:

Third Revised Sheet No. 65
Third Revised Sheet No. 78
Sixteenth Revised Sheet No. 120

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–15161 Filed 9–12–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–513–000]

Chandeleur Pipe Line Company; Notice of Request for Waiver

September 6, 2006.

Take notice that on August 25, 2006, Chandeleur Pipe Line Company tendered for filing a Request for Temporary Waiver of Certain Tariff Provisions and Commission regulation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time September 13, 2006.

Magalie R. Salas,
Secretary.
[FR Doc. E6–15158 Filed 9–12–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP06–397–001 and RP01–350–016]

Colorado Interstate Gas Company; Notice of Compliance Filing

September 6, 2006.

Take notice that on August 31, 2006, Colorado Interstate Gas Company (CIG) submitted a compliance filing pursuant to the Federal Energy Regulatory Commission's order issued August 7, 2006 in Docket Nos. RP06–397–000 and RP01–350–015.

CIG states that the tariff sheets implement the pro forma tariff provisions included in CIG's Offer of Settlement filed June 20, 2006 in Docket Nos. RP06–397–000 and RP01–350–015.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15155 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–572–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on August 31, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets to become effective October 1, 2006:

Forty-Third Revised Sheet No. 11A
First Revised Sheet No. 380H

CIG states that the tariff sheets are being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-For and Other Fuel Gas, Transportation Fuel Gas, Storage Fuel Gas and Rate Schedule CS–1 Firm Compression Fuel Gas and Lost and Unaccounted-For Gas.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary,

[FR Doc. E6–15162 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–579–000]

Columbia Gas Transmission Corporation; Notice of Filing of Service Agreements

September 7, 2006.

Take notice that on September 1, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following Service Agreement for consideration and approval:

FTS Service Agreement No. 88751 between Columbia Gas Transmission Corporation and Fortuna Energy, Inc., Dated July 3, 2006.

In addition, Columbia tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, Fourteenth Revised Sheet No. 500B, with a proposed effective date of November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15181 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–563–030; EL04–102–000]

Devon Power LLC; Notice of Filing

September 7, 2006.

Take notice that on August 24, 2006, ISO New England, Inc. filed a motion for relief from the Commission's reporting requirement to file a report every 90 days updating its progress made in siting, permitting, and construction of transmission and generation upgrades within the New England control area, pursuant to the Commission's order issued June 2, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15176 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–515–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2006.

Take notice that on August 25, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective September 25, 2006.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15147 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–431–001]

El Paso Natural Gas Company; Notice of Request for Waivers

September 6, 2006.

Take notice that on August 31, 2006, El Paso Natural Gas Company (EPNG) filed to request the Federal Energy Regulatory Commission to permit EPNG to revise and/or extend certain penalty and tariff waivers described in its Requests for Waiver Filing filed July 11, 2006 in Docket No. RP06–431–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15156 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 176–018—California]

City of Escondido; Notice of Designation of Certain Commission Personnel as Non-Decisional

September 6, 2006.

Commission staff members James Hastreiter (Office of Energy Projects 503–552–2760; *james.hastreiter@ferc.gov*) and Elizabeth Molloy (Office of the General Counsel; 202–502–8771; *elizabeth.molloy@ferc.gov*) are assigned to help resolve environmental and other issues associated with development of a settlement agreement for the Escondido Project.

As "non-decisional" staff, Mr. Hastreiter and Ms. Molloy will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application.

Different Commission "advisory staff" will be assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the settlement and the relicense application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15153 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–573–000]

Florida Gas Transmission Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on August 31, 2006, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2006:

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions of FGT's Tariff, which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15163 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–094]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

September 6, 2006.

Take notice that on August 31, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Thirty-Seventh Revised Sheet No. 15, to become effective September 1, 2006.

GTN states that this sheet is being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15152 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Gulf South Pipeline Company, LP; Notice of Cash-Out Report

September 6, 2006.

Take notice that on August 28, 2006, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for the period beginning April 1, 2005 and ending June 30, 2006.

Gulf South states that copies of this filing have been served upon Gulf

South's customers, state commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time September 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15159 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

September 7, 2006.

	Docket No.
LSP Morro Bay, LLC (f/k/a Duke Energy Morro Bay LLC)	EG06–54–000
LSP South Bay, LLC (f/k/a Duke Energy South Bay LLC)	EG06–55–000
Bridgeport Energy LLC (f/k/a Duke Energy Morro Bay LLC)	EG06–56–000
LSP Moss Landing, LLC (f/k/a Duke Energy Moss Landing LLC)	EG06–57–000
Griffith Energy, LLC	EG06–58–000
LSP Arlington Valley, LLC (f/k/a Duke Energy Arlington Valley LLC)	EG06–59–000
Casco Bay Energy Company, LLC	EG06–60–000
LSP Oakland, LLC (f/k/a Duke Energy Oakland LLC)	EG06–61–000
Flat Rock Windpower II LLC	EG06–62–000
EPCOR Transmission Inc.; EPCOR Energy Inc.; EPCOR Distribution Inc.; EPCOR Energy Alberta Inc.; EPCOR Utilities Inc.	FC06–7–000
Babcock & Brown Infrastructure Limited; BBI Energy Partnership Pty Limited; BBI Networks (Australia) Pty Limited; BBI IEG Australia Holdings Pty Limited.	FC06–8–000
SUEZ S.A.; Electrabel S.A.; SUEZ Energy Services S.A.; Rivolam S.A.; PTT Natural Gas Distribution Co. Ltd.; SUEZ Energy Asia Co. Ltd.; Suez-Tractebel Energy Holding Coöperatieve U.A.; Zhenjiang Hongshun Thermal Power Co. Ltd.; SUEZ Energy International Luxembourg S.A.; United Power Company S.A.O.G.; Belgelectric Finance B.V.; Sohar Power Company SAOC; Sohar Operation and Maintenance Company LLC; Al Ezzel Power Company B.S.C; Al Ezzel Operation and Maintenance Company W.L.L; Al Hidd Power Company B.S.C.; Tractebel Bahrain W.L.L.; Tractebel Parts & Repairs FZE; SUEZ Energy Andino S.A.; Tibsa Inversora S.A.; SUEZ Energy South America Participacoes Ltda.; Energía del Sur S.A.; Gas Natural de Lima y Callao S.R.L.; SUEZ Energia de Mexico, S.A. de C.V.; Mexico Gas Tampico 1 Ltd.; Tractebel Energia de Monterrey Holdings B.V.; Trigen Energia, Inc.; Trigen Mexico, Inc.; 6425496 Canada Inc.	FC06–9–000
FortisOntario, Inc.; Newfoundland Power Inc.; Maritime Electric Company, Limited; FortisAlberta Inc.; FortisBC Inc.; Belize Electricity Limited; Carribean Utilities Company, Ltd; Princeton Light and Power Company, Limited.	FC06–10–000
Prisma Energy Nicaragua Holdings Ltd.; Prisma Energy International Inc.; Empresa Energetica Corinto Ltd.	FC06–11–000
Brookfield Asset Management Inc.; Valerie Falls Limited Partnership; Lake Superior Power Limited Partnership; Mississippi Property Inc.; Superior Wind Blue Highlands Power Inc.; Superior Wind Prince Power Inc.; Brookfield Power Wind Prince LP; Beaver Power Corporation; Carmichael Limited Partnership; Algonquin Power (Nagagami) L.P.; FPS Canada, Inc.; Waltham Power and Company, Limited Partnership; Lièvre Power L.P.; Coulonge Power and Company, Limited Partnership; Powell River Energy Limited Partnership; Pingston Power Inc.; Energètica Rio Pedrinho S.A.; Centrais Hidrelètricas Grapon S.A.; Energètica Salto Natal S.A.; Energètica Ponte Alta S.A.; Brascan Energètica Minas Gerais S.A..	FC06–12–000
Centrica Barry Limited; Barrow Offshore Wind Limited; Braes of Doune Wind Farm (Scotland) Limited; Centrica (DSW) Limited; Centrica (IDW) Limited; Centrica (Lincs) Limited; Centrica (RBW) Limited; Centrica Brigg Limited; Centrica KL Limited; Centrica Langage Limited; Centrica KPS Limited; Centrica PB Limited; Centrica RPS Limited; Centrica SHB Limited; Glens of Foudland Windfarm Limited; Segebel SA.	FC06–14–000

Take notice that during the month of August 2006, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,

Secretary.

[FR Doc. E6–15172 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–511–000]

Maritimes & Northeast Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2006.

Take notice that on August 24, 2006, Maritimes & Northeast Pipeline, LLC (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 306 to be effective September 24, 2006.

Maritimes states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15145 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–583–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on September 1, 2006, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 2006:

Second Revised Sheet No. 78
Third Revised Sheet No. 80
Third Revised Sheet No. 81

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15166 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–445–000]

MIGC, Inc.; Colorado Interstate Gas Company; Notice of Application

September 7, 2006.

Take notice that on September 1, 2006, MIGC, Inc. (MIGC), 1099 18th Street, Suite 1200, Denver, CO 80202, and Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado, 80944, filed a joint application in Docket No. CP06–445–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for approval for MIGC to abandon its lease of capacity on CIG's Powder River Lateral located in Converse County, Wyoming. Concurrently, CIG is seeking authorization to reacquire the capacity associated with the terminating lease with MIGC, all as more fully set forth in the application which is on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this joint application may be directed to either Ms. Christine M. Odell, Manager, Regulated Pipelines, Western Gas Resources, Inc., MIGC, Inc, MGTC, Inc., 1099 18th Street, Suite 1200, Denver, CO 80202, at (303) 252–6062; or Mr. Richard Derryberry, Director, Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3782 or fax (719) 667–7534.

MIGC's and CIG's joint application states that on October 1, 1996, MIGC and CIG entered into a capacity lease agreement wherein CIG agreed to lease to MIGC approximately 50,000 Mcf/day of capacity on a segment of its Powder River Lateral pipeline located in Converse County, Wyoming. The lease agreement had a ten year term commencing October 1, 1996. The capacity lease agreement expires by its terms on October 1, 2006. Accordingly, MIGC and CIG are seeking the appropriate Commission authorizations for the termination of the lease agreement in this instant application.

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 below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 18, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15171 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–575–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 2006.

Take notice that on August 31, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninety Third Revised Sheet No. 9, to become effective September 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15164 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–332–002]

Northern Natural Gas Company; Notice of Filing

August 29, 2006.

Take notice that on August 25, 2006, Northern Natural Gas Company tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2006:

Second Revised Sheet No. 259A
Original Sheet No. 259B

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15143 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–512–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2006.

Take notice that on August 24, 2006, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 24, 2006.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15146 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–506–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on August 22, 2006, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets:

41 Revised Sheet No. 66
35 Revised Sheet No. 66A
Fourth Revised Sheet No. 66D

Northern states that it is filing the above-referenced tariff sheets to submit a Rate Schedule TFX service agreement for Commission acceptance as a non-conforming and negotiated rate agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15157 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–433–000]

Northern Natural Gas Company; Notice of Application

September 6, 2006.

Take notice that on August 29, 2006, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP06–433–000, an application pursuant to sections 7 (b) and (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to: (1) Construct, modify and operate certain compression, pipeline, and town border station (TBS) facilities, with appurtenances all located in various counties in Iowa, Nebraska and South Dakota; and (2) abandon certain compression facilities in Clay County, Kansas, in order to expand the capacity of Northern's West Leg pipeline segment of its Market Area facilities, 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.

In its application, Northern asserts that the installation of the proposed facilities will provide approximately 32,100 Dth/day of incremental peak day entitlement that has been subscribed to by its customers. Northern also states that the facilities proposed will result in capacity greater than currently subscribed by its customers and that any excess capacity created will be posted on Northern's Web site as generally available and offered to shippers on a nondiscriminatory basis. Northern further states that the proposal herein is a result of an analysis conducted following Open Seasons soliciting interest for an expansion project in its Market Area that would be effective beginning November 1, 2007. In addition, Northern is requesting approval for rolled-in rate treatment of the expansion costs. The facilities proposed constitute the second discrete stand-alone project under the umbrella of the Northern Lights expansion project.[1] The estimated capital cost for the facilities proposed herein is $8,083,331.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Government Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

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: September 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15169 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Northern Lights is a multi-year commitment to expand Northern's Market Area capacity in response to its customer's future requirements through 2026. On June 23, 2006, Northern filed an application with the Commission under Docket No. CP06–403–000 requesting authorization to construct, modify and operate facilities for the first discrete stand-alone Northern Lights project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–72–002]

PPL EnergyPlus, LLC v. New York Independent System Operator, Inc.; Notice of Filing

September 7, 2006.

Take notice that on August 28, 2006, New York Independent System Operator, Inc. filed changed pages of its Installed Capacity Manual (ICAP), and a report concerning changes to the underlying allocation methodology in compliance with the Commission's June 29, 2006 order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15175 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–521–000]

Questar Pipeline Company; Notice of Tariff Filing

September 6, 2006.

Take notice that on August 28, 2006, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective September 29, 2006:

Twelfth Revised Sheet No. 1.
Seventeenth Revised Sheet No. 40.
Fifth Revised Sheet No. 69.
Third Revised Sheet No. 99L.
Original Sheet No. 99M.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15160 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-200-011]

Rockies Express Pipeline LLC; Notice of Negotiated Rate Filing

September 6, 2006.

Take notice that on August 31, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised sheet No. 22, with an effective date of September 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15154 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–582–000]

Sabine Pipe Line LLC; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on August 31, 2006, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets

listed on Attachment A to the filing, to become effective October 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15165 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ06–5–000]

Southwest Transmission Cooperative, Inc.; Notice of Filing

September 7, 2006.

Take notice that on August 30, 2006, Southwest Transmission Cooperative, Inc. filed a petition for declaratory order requesting that the Commission find that its updated "safe harbor" Open Access Transmission Tariff constitutes an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15177 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–509–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2006.

Take notice that on August 24, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective September 24, 2006.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas.

Secretary.

[FR Doc. E6–15144 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.RP06–588–000]

Texas Eastern Transmission, LP; Notice of Compliance Report

September 7, 2006.

Take notice that on September 1, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing pursuant to Section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1, its report of recalculated Operational Segment Capacity Entitlements to become effective November 1, 2006.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15170 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–071]

TransColorado Gas Transmission Company; Notice of Negotiated Rate

September 6, 2006.

Take notice that on August 31, 2006, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Ninth Revised Sheet No. 22B, to be effective September 1, 2006.

TransColorado states that the tendered tariff sheet proposes to revise TransColorado's Tariff to reflect an amended negotiated-rate contract.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15168 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–584–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2006.

Take notice that on September 1, 2006, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2006:

Fourth Revised Sheet No. 38A
Third Revised Sheet No. 38E
Third Revised Sheet No. 38F

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15167 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–103–000]

Indeck-Elwood, LLC, Complainant v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

September 7, 2006.

Take notice that on August 31, 2006, Indeck-Elwood, LLC (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (PJM), pursuant to the sections 206 and 306 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 385.306, alleging that PJM's security requirements relating to the interconnection of new generation are unjust and unreasonable and in violation of Commission Policy. The Complainant also request fast-track processing of this complaint.

The Complainant states that copies of the complaint were served on the contacts for PJM Interconnection, L.L.C. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15174 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 29, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–75–000.

Applicants: Allegheny Ridge Wind Farm, LLC.

Description: Allegheny Ridge Wind Farm, LLC submits a notice of Self Certification for Exempt Wholesale Generator Status.

Filed Date: 08/24/2006.

Accession Number: 20060824–5113.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–013.

Applicants: PacifiCorp.

Description: PacifiCorp submits Rodney Frame's workpapers to support the analyses in its 8/21/06 filing of an updated market power analysis and on 8/24/06 submits an errata to this filing.

Filed Date: 08/23/2006; 08/24/06.

Accession Number: 20060828–0034; 20060828–0040.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 13, 2006.

Docket Numbers: ER99–3420–007.

Applicants: Sunbury Generation, LLC.

Description: Sunbury Generation, LP submits a notice of change in status pursuant to the Commission's regulations and condition no. 6 of the Commission's order issued 7/20/06.

Filed Date: 08/24/2006.

Accession Number: 20060828–0019.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

**Docket Numbers:* ER03–552–011.

Applicants: New York Independent System Operator, Inc.

Description: Strategic Energy, LLC responds to New York Independent System Operator, Inc's quarterly status report submitted on 7/17/06 under ER03–552 *et al.*

Filed Date: 08/25/2006.

Accession Number: 20060828–0036.

Comment Date: 5 p.m. Eastern Time on Friday, September 15, 2006.

Docket Numbers: ER03–563–061; EL04–102–016.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits its ninth compliance report pursuant to the Commission's 6/2/06 order.

Filed Date: 08/24/2006.

Accession Number: 20060824–5052.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER05–764–003.

Applicants: Montana Alberta Tie Ltd.

Description: Montana Alberta Tie Ltd submits a Report on the June 2006 Capacity Auction pursuant to FERC's 7/5/05 Order.

Filed Date: 08/24/2006.

Accession Number: 20060828–0026.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1185–001.

Applicants: Pace Global Asset Management, LLC

Description: Pace Global Asset Management, LLC submits an amendment to its 6/29/06 Submission of its Energy Management Agreement.

Filed Date: 08/23/2006.

Accession Number: 20060825–0069.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 13, 2006.

**Docket Numbers:* ER06–1221–002.

Applicants: Parkview AMC Energy, LLC.

Description: Parkview AMC Energy, LLC submits FERC Electric Tariff, Original Volume 1, to become effective as of 7/5/06 under ER06–1221.

Filed Date: 08/16/2006.

Accession Number: 20060818–0123.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 6, 2006.

Docket Numbers: ER06–1392–000.

Applicants: FPL Energy Oliver Wind, LLC.

Description: FPL Energy Oliver Wind, LLC submits an application for authorization to make market-based sales of energy and capacity at market-based rates, to be effective 10/22/06.

Filed Date: 08/23/2006.

Accession Number: 20060825–0011.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 13, 2006.

Docket Numbers: ER06–1395–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits an amendment to the CAISO Tariff regarding the Low Voltage Transmission Revenue Requirement for non-load serving participating transmission owners.

Filed Date: 08/24/2006.

Accession Number: 20060825–0073.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1396–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement with FirstEnergy Nuclear Operating Co *et al.*

Filed Date: 08/24/2006.

Accession Number: 20060825–0072.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1397–000.

Applicants: Allegheny Ridge Wind Farm, LLC.

Description: Allegheny Ridge Wind Farm, LLC submits a petition for market-based rate authority under FERC Electric Tariff, Original Volume 1.

Filed Date: 08/24/2006.

Accession Number: 20060825–0071.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1398–000.

Applicants: Duke Power Company LLC.

Description: Duke Power Company LLC submits four new Network Integration Service Agreements for Network Integration Transmission Service pursuant to section 205 of the Federal Power Act.

Filed Date: 08/24/2006.

Accession Number: 20060825–0079.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1399–000.

Applicants: Sunbury Generation LP.

Description: Sunbury Generation LP submits a notice of succession pursuant to Condition #6 to Order issued 7/20/06.

Filed Date: 08/24/2006.

Accession Number: 20060825–0070.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1400–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: Central Hudson Gas & Electric Corp submits a Notice of Cancellation of Rate Schedule FERC 32, Transmission Agreement with Orange and Rockland Utilities, Inc.

Filed Date: 08/24/2006.

Accession Number: 20060828–0020.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1401–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement with Allegheny Ridge Wind Farm, LLC and Pennsylvania Electric Co.

Filed Date: 08/24/2006.

Accession Number: 20060828–0023.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1402–000.

Applicants: Westmoreland Partners (ROVA I).

Description: Westmoreland Partners submits a Notice of Succession to notify the Commission that as a result of a name change Westmoreland Partners has succeeded to the market-based rate schedule of Westmoreland-LG&E Partners.

Filed Date: 08/24/2006.

Accession Number: 20060828–0025.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1403–000.

Applicants: Westmoreland Partners (ROVA II).

Description: Westmoreland Partners submits a notice of succession to notify FERC that as a result of a name change it has succeeded to the market-based rate schedule of Westmoreland-LG&E Partners.

Filed Date: 08/24/2006.

Accession Number: 20060828–0024.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1404–000.

Applicants: Devon Power LLC.

Description: Devon Power, LLC submits revisions to section 3.2 of its RMR Agreement, Tariff Sheet Nos. 9, 9A and 27 to Electric Tariff Original Volume No. 3.

Filed Date: 08/24/2006.

Accession Number: 20060828–0028.

Comment Date: 5 p.m. Eastern Time on Thursday, September 14, 2006.

Docket Numbers: ER06–1405–000.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Co submits a Construction Commitment Agreement with New Brunswick Power Transmission Corp to proceed with the construction of a 345kV transmission line from Point Lepreau, New Brunswick to Orrington, ME.

Filed Date: 08/25/2006.

Accession Number: 20060828–0027.

Comment Date: 5 p.m. Eastern Time on Friday, September 15, 2006.

Docket Numbers: ER06–1406–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service with MM Lopez Energy, LLC.

Filed Date: 08/25/2006.

Accession Number: 20060828–0030.

Comment Date: 5 p.m. Eastern Time on Friday, September 15, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES06–61–000.

Applicants: Aquila, Inc.

Description: Aquila Inc. submits an application for authorization under Section 204(a) of the Federal Power Act for Authorization to Issue Up to and Including 9,000,000 Shares of Common Stock.

Filed Date: 08/23/2006.

Accession Number: 20060825–0075.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 13, 2006.

Docket Numbers: ES06–62–000.

Applicants: Alloy Power L.L.C.

Description: Alloy Power L.L.C. submits an application for authorization to issue securities up to $65 million of secured, short-term, debt securities pursuant to section 204 of the FPA.

Filed Date: 08/25/2006.

Accession Number: 20060825–5096.

Comment Date: 5 p.m. Eastern Time on Friday, September 15, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–106–000.

Applicants: Edison International.

Description: Edison International submits a waiver notification of status as a single-state holding company system.

Filed Date: 08/25/2006.

Accession Number: 20060825–5072.

Comment Date: 5 p.m. Eastern Time on Friday, September 15, 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. E6–15137 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 6, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER99–830–017; ER04–925–011.

Applicants: Merrill Lynch Commodities, Inc.; Merrill Lynch Capital Services, Inc.

Description: Merrill Lynch Commodities, Inc. submits an errata to amend its 7/24/06 filing to include Merrill Lynch Capital Services, Inc. to its notice of change in status.

Filed Date: 08/30/2006.

Accession Number: 20060905–0082.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 20, 2006.

Docket Numbers: ER99–1610–017.

Applicants: Southwestern Public Service Company.

Description: Xcel Energy Services, Inc. on behalf of Southwestern Pub. Svc. Co., submits revised tariff sheets to its, Second Revised Volume No. 3.

Filed Date: 08/31/2006.

Accession Number: 20060905–0099.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER00–2738–006; ER99–1004–007; ER00–2740–006; ER01–1721–004; ER02–564–004.

Applicants: Entergy Nuclear Fitzpatrick, LLC; Entergy Nuclear Generation Company; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Vermont Yankee, LLC.

Description: Entergy Services, Inc., on behalf of Entergy Nuclear Generation Co. et al., submits modifications to its market based rate tariffs pursuant to FERC's 7/31/06 Order.

Filed Date: 08/30/2006.

Accession Number: 20060906–0011.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 20, 2006.

Docket Numbers: ER05–1178–004; ER05–1191–004.

Applicants: Gila River Power, L.P.; Union Power Partners, L.P.

Description: Gila River Power, LP and Union Power Partners, LP submits a Notice of Material Change of Status.

Filed Date: 08/31/2006.

Accession Number: 20060905–0096.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–199–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits Substitute Original Sheet 509 et al., to Electric Tariff, Sixth Revised Volume No 1.

Filed Date: 08/31/2006.

Accession Number: 20060905–0100.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–320–001.

Applicants: Southwestern Public Service Company.

Description: Xcel Energy Services Inc., on behalf of Southwestern Public Service Company submits Rate Schedule 133—Transaction Agreement for Total Requirements Power Service with Tri-County Electric Cooperative Inc.

Filed Date: 08/30/2006.

Accession Number: 20060905–0083.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 20, 2006.

Docket Numbers: ER06–900–002.

Applicants: Vermont Electric Power Company; Vermont Transco, LLC.

Description: Vermont Electric Power Company et al., submits revised FERC Rate Schedules 2–6 to comply with Order 614.

Filed Date: 08/31/2006.

Accession Number: 20060905–0031.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–917–002.

Applicants: PacifiCorp.

Description: PacifiCorp submits an errata to its 8/21/06 filing of their Open Access Transmission Tariff, in compliance with FERC's 7/13/06 Letter Order.

Filed Date: 08/31/2006.

Accession Number: 20060906–0026.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1222–001.

Applicants: PEAK Capital Management, LLC.

Description: PEAK Capital Management, LLC, submits a statement that declares that none of its officers work for any other entity other than PEAK.

Filed Date: 08/11/2006.

Accession Number: 20060815–0191.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 12, 2006.

Docket Numbers: ER06–1222–002.

Applicants: PEAK Capital Management, LLC.

Description: PEAK Capital Management, LLC, submits a statement that its partners do not work for any other entity other than affiliation with any entities within any energy industry.

Filed Date: 08/16/2006.

Accession Number: 20060828–0029.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 12, 2006.

Docket Numbers: ER06–1334–001.
Applicants: Spindle Hill Energy, LLC.
Description: Spindle Hill Energy, LLC, submits amendment to its 8/3/06 filed application.
Filed Date: 08/31/2006.
Accession Number: 20060905–0097.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1348–001.
Applicants: Katmai Energy, LLC.
Description: Katmai Energy, LLC, submits an Amendment to the Petition for Acceptance of Initial Rate Schedule, Waiver and Blanket Authority.
Filed Date: 08/29/2006.
Accession Number: 20060901–0060.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 19, 2006.

Docket Numbers: ER06–1433–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits its Annual Filing of Revised Accruals for Post Retirement Benefits Other Than Pensions.
Filed Date: 08/31/2006.
Accession Number: 20060905–0058.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1434–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc submits a non-conforming Market Participate Service Agreement with North America Power Partners, LLC.
Filed Date: 08/31/2006.
Accession Number: 20060905–0074.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1435–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits a Service Agreement and an Interconnection Agreement with Lathrop Irrigation District.
Filed Date: 08/31/2006.
Accession Number: 20060905–0179.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1436–000.
Applicants: Entergy Services Inc.
Description: Entergy Services, Inc as agent for Entergy Operating Companies submits a Long-Term Firm Point-to-Point Transmission Service Agreements with Plum Point Energy Associates, LLC et al.
Filed Date: 08/31/2006.
Accession Number: 20060905–0081.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1437–000.
Applicants: Kentucky Utilities Company: Kentucky Utilities Company.
Description: E.ON U.S., LLC on behalf of Louisville Gas and Electric Co and Kentucky Utilities Co submits an unexecuted Firm Point-to-Point transmission service agreement with the Indiana Municipal Power Agency.
Filed Date: 08/31/2006.
Accession Number: 20060905–0080.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1438–000.
Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company; LG&E Energy Marketing Inc.
Description: Louisville Gas and Electric Co, Kentucky Utilities Co and LG&E Energy Marketing Inc submit proposed tariffs for cost-based sales of capacity and energy.
Filed Date: 08/31/2006.
Accession Number: 20060905–0079.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1439–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to their Open Access Transmission and Energy Markets Tariff.
Filed Date: 08/31/2006.
Accession Number: 20060905–0078.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1440–000.
Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners; Midwest Stand Transmission Companies.
Description: Midwest Independent Transmission System Operator, Inc et al submit proposed revisions to the Midwest ISO Agreement.
Filed Date: 08/31/2006.
Accession Number: 20060905–0077.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1441–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted Large Generator Interconnection Agreement with Consumers Energy Co et al.
Filed Date: 08/31/2006.
Accession Number: 20060905–0076.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1442–000.
Applicants: American Transmission Company.
Description: American Transmission Company LLC submits its Amendment 2 to the Amended and Restated Generation-Transmission Interconnection Agreement with Wisconsin Electric Power Co et al.
Filed Date: 08/31/2006.
Accession Number: 20060905–0038.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1443–000: ER04–372–005.
Applicants: Pennsylvania Power Company; Metropolitan Edison Company; Pennsylvania Electric Company; The Cleveland Electric Illuminating Company; Ohio Edison Company; The Toledo Electric Company.
Description: FirstEnergy Service Co on behalf of Pennsylvania Power co et al submit an initial and amended market-based rate tariff and notice of cancellation.
Filed Date: 08/31/2006.
Accession Number: 20060905–0029.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1444–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits its unexecuted Amended and Restated Generator Interconnection Agreement.
Filed Date: 08/31/2006.
Accession Number: 20060905–0095.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1445–000.
Applicants: UGI Utilities, Inc.
Description: UGI Utilities, Inc submits proposed revised tariff sheets to their FERC Open Access Transmission Tariff administered by PJM Interconnection, LLC.
Filed Date: 08/31/2006.
Accession Number: 20060905–0094.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1447–000.
Applicants: PacifiCorp.
Description: PacifiCorp's submits proposed revisions to its OATT in compliance with Orders 2006-B and 676.
Filed Date: 08/31/2006.
Accession Number: 20060905–0183.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1455–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits its Participation Power Agreement with Mid-Kansas Electric Company LLC.
Filed Date: 08/31/2006.
Accession Number: 20060906–0014.
Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1456–000.
Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Third Revised Rate Schedule 300, Control Area Services Agreement with the Missouri Joint Municipal Electric Utility Commission.

Filed Date: 08/31/2006.

Accession Number: 20060906–0010.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1457–000.

Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company.

Description: E.ON US, LLC on behalf of Louisville Gas and Electric Co et al. submits unexecuted agreements with Illinois Municipal Electric Agency.

Filed Date: 08/31/2006.

Accession Number: 20060906–0013.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1458–000.

Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company.

Description: Louisville Gas & Electric Co et al submit an unexecuted Service Agreement for Network Integration Transmission Service et al with East Kentucky Power Cooperative.

Filed Date: 08/31/2006.

Accession Number: 20060906–0020.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1459–000.

Applicants: NRG Energy Center Dover LLC.

Description: NRG Energy Center Dover LLC submits its proposed FERC Electric Tariff, Original Volume 2 and supporting cost data.

Filed Date: 08/31/2006.

Accession Number: 20060906–0019.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1460–000.

Applicants: Entergy Solutions Supply, Ltd.

Description: Entergy Solutions Supply, Ltd submits a Notice of Cancellation of their FERC Electric Rate Schedule 1.

Filed Date: 08/31/2006.

Accession Number: 20060906–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 2006.

Docket Numbers: ER06–1461–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Revised Sheets to its Facilities Agreement with Southern California Public Power Authority.

Filed Date: 08/31/2006.

Accession Number: 20060906–0021.

Comment Date: 5 p.m. Eastern Time on Thursday, September 21, 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.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–15149 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 710–038]

Wolf River Hydro Limited Partnership; Notice of Availability of Environment Assessment

August 29, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed the application for amendment of license for the Shawano Project (FERC No. 710), filed with the Commission on April 27, 2006. The project is located on the Wolf River, in Shawano County, Wisconsin. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that approval of the licensee's application, as modified by the Commission, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled "Order Amending License", issued August 28, 2006, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (P–710) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E6–15148 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Dominion Virginia Power; Project No. 906–006; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 29, 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.:* P–906–006.

c. *Date Filed:* June 12, 2006.

d. *Applicant:* Virginia Electric and Power Company, doing business as Dominion Virginia Power.

e. *Name of Project:* Cushaw Hydroelectric Project.

f. *Location:* On the James River in near Glasgow, Virginia, in Bedford and Amherst Counties, Virginia. The project occupies 4.1 acres of United States Forest Service lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James Thornton, Dominion Virginia Power, 5000 Dominion Boulevard, 1 NE., Glen Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Kristen Murphy, (202) 502–6236 or *kristen.murphy@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* October 28, 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 Commissions Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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 may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 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. *Description of Project:* The Cushaw Project consists of the following: (1) A 1,550-foot-long and 27-foot-high reinforced concrete dam extending diagonally across the James River; (2) a 138-acre reservoir with a surface elevation of 656 feet mean sea level; (3) an integral powerhouse with the dam containing five generating units with a total installed capacity of 7,500 kilowatts; (4) a 2.3–kVcable connecting the powerhouse to the Cushaw substation; and (5) appurtenant facilities. The project is operated in a run-of-river mode, and the average annual electrical generation is approximately 16,971,000 kilowatthours.

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/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (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.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in the EA. Staff intends to give at least 30 days for entities to comment on the EA before final action is taken on the license application.

Notice application ready for environmental analysis: December 2006.

Notice of the availability of the EA: April 2007.

Ready for Commission's decision on the Application: June 2007.

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. E6–15141 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

September 7, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 739–019.

c. *Date Filed:* July 27, 2006.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Claytor Project.

f. *Location:* The project is located on the New River in Pulaski County, Virginia. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Teresa Rogers, Reservoir Superintendent, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011, (540) 985–2441, *tprogers@aep.com.*

i. *FERC Contact:* Jade Alvey, *jade.alvey@ferc.gov,* 202–502–6864.

j. *Deadline for filing comments and or motions:* October 10, 2006.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 website under the "e-Filing" link. Please reference "Claytor Project, FERC Project No. 739–019" on any comments or motions filed.

k. *Description of Project:* APC requests Commission approval to permit the Boy

Scouts of America (BSA) to install recreation facilities at Camp Claytor on Claytor Lake. All recreation facilities would be within the project boundary. The BSA propose to construct: (1) Two covered boat slips with an entrance walkway, observation deck, storage area, and Aquatic Director Command Center; (2) a scuba crib with an enclosed storage area; (3) a fringe pier system with thirteen uncovered boat slips; (4) a boardwalk with Americans with Disabilities Act access; (5) a covered training pavilion; (6) a boat launch area; (7) a floating dock; (8) a waterfront entry point; and (9) a fishing and swimming test boardwalk.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "E-library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15178 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–13–000]

Hydroelectric Infrastructure Conference; Notice of Technical Conference

September 7, 2006.

A Commissioner-led technical conference will be held on December 6, 2006, from 1 p.m. to 5 p.m. (EST). The conference will be held in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend; there is no fee or registration.

The purpose of the conference is to discuss the status of ocean-based hydroelectric technologies (wave, tidal, and current) and explore the environmental, financial, and regulatory issues pertaining to the development of these new technologies.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available to the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. A free Webcast of this event will be 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 Webcasts. 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.gmu.edu* or contact Danelle Perkowski or David Reininger at 703–993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Additional details regarding the agenda for this conference will be included in a subsequent notice.

For more information about the conference, please contact Tim Welch at 202–502–8760 (*timothy.welch@ferc.gov*) or Kristen Murphy at 202–502–6236 (*kristen.murphy@ferc.gov*).

Magalie R. Salas,

Secretary.

[FR Doc. E6–15182 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockets Nos. RM05–25–000; RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service; Notice of Technical Conference

September 7, 2006.

Take notice that on October 12, 2006, the Federal Energy Regulatory Commission (Commission) will host a technical conference to discuss issues raised in the Notice of Proposed Rulemaking issued in this proceeding. *Preventing Undue Discrimination and Preference in Transmission Service,* 115 FERC ¶ 61,211 (2006). The technical conference will be held from 9 a.m. to 4 p.m. (EDT) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend. A further notice with a detailed agenda will be issued in advance of the conference.

A free Webcast 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 Webcasts. 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.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact:

Daniel Hedberg, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6243. *Daniel.Hedberg@ferc.gov.*

Kathleen Barrón, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–646. *Kathleen.Barron@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–15179 Filed 9–12–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0710; FRL–8090–8]

The Association of American Pesticide Control Officials State FIFRA Issues Research and Evaluation Group Working Committee on Pesticide Operations and Management; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) will hold a 2–day meeting, beginning on October 2, 2006 and ending October 3, 2006. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 2, 2006 from 8.30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on October 3, 2006.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov* or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are parties interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

Docket. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0710. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

II. Tentative Agenda

1. SFIREG Issue Paper on Laboratory Methodology.

2. SFIREG Issue Paper on 25(b) Product Registration.

3. PART Measure Discussion on State's Perspective on How It Has Been Working and Recommendations to take to SFIREG.

4. State Data Harmonzation.

5. Label Identification Proposals, Recommendations to SFIREG.

6. Chemigation Tape Issue.

7. Worker Protection Safety and Certification and Training Status of Changes.

8. Endangered Species Enforcement Questions.

9. Parking Lot Issues and Recommendations for SFIREG.

10. EPA Update/Briefing.

- a. Office of Pesticide Programs Update.
- b. Office of Enforcement Compliance Assurance Update.

11. POM Working Committee Workgroups Issue Papers/Updates.

12. Misting System Labeling and associated REDs.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 28, 2006.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. E6–14990 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8219–1]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB). For information on access or services for individuals with disabilities, please contact Gloria Car, U.S. EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

DATES: The meeting will be held on Thursday, October 5, 2006, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Omni Royal Orleans, 621 Saint

Louis Street, New Orleans, LA 70140, 504–529–5333. *http://www.omnihotels.com*

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda topics include: Gulf of Mexico Alliance and *Governors' Action Plan* Updates; Federal Support Framework—Accomplishments; CEQ Assessment of Progress and Near-Term Priorities; Gulf Hypoxia—Status of Reassessment; GMP Accomplishments Report; GMP FY07 Workplan; Gulf Guardian Awards Program; Binational Initiatives.

The meeting is open to the public.

Dated: September 5, 2006.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E6–15205 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0708; FRL–8090–7]

Full Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 2 and ½ day meeting, beginning on October 11 and ending on October 13, 2006. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics. The October 13, ½ day meeting is scheduled for the TPPC members only.

DATES: The meeting will be held on October 11–12, 2006 from 9 a.m. to 5 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Mystic Lake Casino Hotel, 2400 Mystic Lake Boulevard, Prior Lake, MN 55372. Telephone No. 1–(800) 262–7799, ext. 6526.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPP–2006–0708, may be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*or Lillian Willmore, TPPC Facilitator, P.O. Box 470829 Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax (617) 277–1656; e-mail address: *naecology@aol.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you may be potentially affected by this action if you are interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All parties are invited and encourage to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the application of this action to a particular entity, consult either person listed under **FOR FURTHER INFORMATION CONTACT.**

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substance under the Federal Food, Drug and Cosmetic Act FFDCA, or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0708. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Tentative Agenda

1. TPPC State of the Council Report2. EPA/OPP Update/Report3. Pesticide Impacts on the Colorado River Indian Tribes4. Strategic Planning Discussion5. Worker Protection Standards Revisions6. Container Containment Rule Update7. Highlight Alaska Issues8. Eco-Areas Report and US EPA Region Reports9. Circuit Riders Update10. Mosquito Misters and other Mosquito Abatement Related Concerns11. Panel on NAGPRA and Presentation12. Special Project Grants13. Grant Writing, Diversifying Funding, and How to be Competitive in Obtaining Funding14. Working Session on TPPC Strategic Planning.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2006 must be received on or before September 28, 2006.

List of Subjects

Environmental protection, [insert additional terms as appropriate].

Dated: August 28, 2006.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs

[FR Doc. E6–14991 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0687; FRL–8091–3]

Petition to Amend Certain FIFRA Section 25(b) Pesticide Products; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice identifies a petition filed by the Consumer Specialty

Products Association (CSPA) pertaining to FIFRA section 25(b) pesticide products. The petition requests the Agency to modify the minimum risk regulations at 40 CFR 152.25(f) for those products that claim to control public health pests (as defined in Pesticide Registration (PR) Notice 2002-1) and requests that any such product making public health claims be subject to EPA registration requirements as a precondition of their sale. The Agency has determined that the petition may be of regional and national significance.

DATES: Comments must be received on or before November 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0687, by one of the following methods:

•*Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0687. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Brian Steinwand, Biopesticide and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7973; fax number: (703) 308-7026; e-mail address: *steinwand.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you produce, manufacture, distribute, sell or use exempted products that claim to control public health pests. Potentially affected entities may include, but are not limited to: Registered and unregistered establishments that commercialize products that claim to control or mitigate any pests that pose a threat to human health.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 152.25(f). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What is the Basis of the Petition?

The minimum risk pesticide exemption at 40 CFR 152.25(f) exempts

from the requirements of FIFRA those products whose only active ingredients are among a set of ingredients listed in the exemption, provided that, among other things:

1. The only inert ingredients in the product are those listed in the most current List 4A (minimal risk ingredients);

2. The product does not "bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease"; and

3. The product does not "include any false and misleading labeling statements, including those listed in 40 CFR 156.10(a)(5)(i) through (viii)."

The petitioner argues that the exemption in 40 CFR 152.25(f) as currently written, endangers public health by permitting labeling claims for effectiveness against public health pests without requiring proof that these exempt pesticides are effective against such pests.

III. What Action is the Agency Taking?

Through this notice, the Agency is providing notice of the petition submitted by CSPA and is asking for public comment. Following the review of the petition and any comments received in response to this notice, EPA will decide how best to respond to the petition. The petition, as well as a summary prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the homepage of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number EPA–HQ–OPP–2006–0687. Once the search has located the docket, clicking on "Docket ID" will bring up a list of all documents in the docket related to the petition.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 1, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–15204 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0667; FRL–8091–7]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Spiromesifen in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0677 and pesticide petition numbers (PP 5E6901 and PP 6F7039), by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0677. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463, e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

Amendment to Existing Tolerance

PP 5E6901. Interregional Research Project No. 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 WPrinceton, NJ 08540, proposes to amend the tolerance(s) in 40 CFR 180.607 for residues of the insecticide spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on the food commodities vegetable, fruiting, group 8 at 0.45 parts per million (ppm).

New Tolerance

PP 6F7039. Bayer CropScience, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR 180.607 for inadvertent or indirect residues of the insecticide spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1- oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on food commodities oats, forage; oats, fodder; and oats, straw at 0.25 ppm, and in or on oats, grain at 0.03 ppm.

For both petitions analytical methodology using liquid chromatography/mass spectroscopy/mass spectroscopy (LC/MS/MS) detection is used to measure and evaluate the chemical residues.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–14989 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0732; FRL–8091–2]

Notice of Filing of Pesticide Petitions for Establishment to Regulations for Residues of Trifloxystrobin in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of trifloxystrobin in or on asparagus; papaya; sapote, black; canistel; sapote, mamey; mango; sapodilla; star apple; vegetable, root, except sugar beet, subgroup 1B; and radish, tops.

DATES: Comments must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0730 and pesticide petition number (PP 6E7088), by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0732. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of trifloxystrobin in or on asparagus; papaya; sapote, black; canistel; sapote, mamey; mango; sapodilla; star apple; radish, roots; and radish, tops. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of trifloxystrobin residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 6E7088. The Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390, proposes to establish tolerances for residues of the fungicide trifloxystrobin and the free form of its acid metabolite (CGA-32113) in or on asparagus at 0.07 parts per million (ppm); papaya at 0.4 ppm; sapote, black at 0.4 ppm; canistel at 0.4 ppm; sapote, mamey at 0.4 ppm; mango at 0.4 ppm; sapodilla at 0.4 ppm; star apple at 0.4 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.2 ppm; and radish, tops at 20 ppm. A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted. The limit of detection (LOD) for each analyte of this method is 0.08 ng injected, and the limit of quantitation (LOQ) is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:August 31, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–14992 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0730; FRL–8091–1]

Notice of Filing of Pesticide Petitions for Establishment to Regulations for Residues of Esfenvalerate in or on Okra and Oilseed Crops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of esfenvalerate in or on okra, and oilseed crops.

DATES: Comments must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0730 and pesticide petition number (PP 6E7096 and 9E5075), 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.
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Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0730. 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.

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FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P) Office of Pesticide Programs, Environmental Protection Agency,m 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

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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.

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iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of esfenvalerate in or on okra and oilseed crops. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of esfenvalerate residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 6E7096 and *9E5075*. The Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390, proposes to establish tolerances for residues of the insecticide esfenvalerate ((S)-cyano-(3-phenoxyphenyl)methyl(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate) in or on okra at 0.5 parts per million (ppm) (*PP6E7096*) and oilseed crops; rapeseed (canola), seed; indian rapeseed; indian mustard, seed; field mustard, seed; black mustard, seed; flax, seed; sunflower, seed; safflower, seed; borage, seed; and crambe at 0.3 ppm (9E5075). There is a practical analytical method utilizing electron-capture gas chromatography with nitrogen phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for updated method is the same as that of the current PAM II, which is 0.01 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–15083 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0767; FRL–8092–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 31, 2006 to August 11, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2006–0767, by one of the following methods.

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0767. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- *Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0767. 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 regulations.gov or e-mail. The regulations.gov website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will

be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room location will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed 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 number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 31, 2006 to August 11, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 28 Premanufacture Notices Received From: 07/31/06 to 08/11/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0694	07/31/06	10/28/06	Lubrizol metalworking additives	(G) Hydraulic fluid	(S) Phosphoric acid, mixed mono- and diesters with 2-ethyl-1-hexanol and polyethylene glycol mono-C_{12-16}-alkyl ethers
P–06–0695	08/01/06	10/29/06	CBI	(G) Masking aid	(G) Isocyanate terminated adduct of polymeric isocyanate with an amine silane
P–06–0696	08/02/06	10/30/06	CBI	(G) Coating component	(G) Polymer of styrene, alkyl methacrylates, and substituted methacrylates
P–06–0697	08/04/06	11/01/06	UBE America Inc.	(S) Solvent for electrolyte	(G) Alkyl carbonate
P–06–0698	08/03/06	10/31/06	CBI	(G) Coating component	(G) Polymer of acrylic and meth-acrylic acid derivatives
P–06–0699	08/04/06	11/01/06	CBI	(G) Lubricant additive	(G) Aminoalkyl alcohol, n,n-dialkyl derivates
P–06–0700	08/07/06	11/04/06	Chattem Chemicals, Inc.	(S) Gellant used for ink varnishes	(G) Modified aluminum kelate
P–06–0701	08/07/06	11/04/06	The Dow Chemical Company	(G) Polymer coatings	(G) Lithium salt of ethylene acrylic acid copolymer
P–06–0702	08/07/06	11/04/06	CBI	(G) Destructive use	(G) Substituted aliphatic amine
P–06–0703	08/07/06	11/04/06	CBI	(G) Additive, open, non-dispersive use	(G) Amine containing polyalkylene oxides
P–06–0704	08/07/06	11/04/06	Nagase America Corporation	(G) polymer additive	(S) 1-butene, polymer with 1-propene, maleated
P–06–0705	08/07/06	11/04/06	CBI	(G) Additive, open, non-dispersive use	(G) Polyamine modified polyamide
P–06–0706	08/08/06	11/05/06	Mane, USA	(G) perfumery ingredient	(S) Tetrahydro-3 (phenylmethyl)-2h-pyran
P–06–0707	08/07/06	11/04/06	CBI	(S) Colorant for cellulosic paper	(G) Alkanoic acid, hydroxy, compound with [[[[(alkylamino)alkyl]amino]heterocycle][(hydro-oxo-benzimidazolyl)azo]hydroxy-carbopolycyclesulfonic acid
P–06–0708	08/08/06	11/05/06	CBI	(G) Open, non-dispersive (resin)	(G) Functionalized melamine resin
P–06–0709	08/08/06	11/05/06	CBI	(G) Additive for plastic and low grade lubricants.	(G) Maleated mixed esters with straight and branched alkyl alcohols
P–06–0710	08/08/06	11/05/06	CBI	(G) Open, non-dispersive (resin)	(G) Ester and fluoro functionalized resin
P–06–0711	08/09/06	11/06/06	CBI	(S) Additive for non-cosmetic personal care products	(G) Homopolymer of lysine
P–06–0712	08/09/06	11/06/06	CBI	(S) Resin for pigmented decorative coatings	(G) Alkyd phthalic polyester
P–06–0713	08/10/06	11/07/06	Cognis Corporation	(S) Surfactant for hard surface cleaners formulations	(S) D-glucopyranose, 6-o-(carboxykmethyl)-, oligomeric, C_{10-16}-alkyl glycosides, sodium salts
P–06–0714	08/11/06	11/08/06	CBI	(S) Raw material intermediate used in the manufacture of dispersions for use in electronic inks	(G) Polymer-stabilized titania
P–06–0715	08/11/06	11/08/06	CBI	(S) Raw material intermediate used in the manufacture of polymerized pigments	(G) Vinyl surface treated carbon black
P–06–0716	08/11/06	11/08/06	CBI	(S) Raw material intermediate used in the manufacture of polymerized pigments	(G) Vinylsilane surface treated titania
P–06–0717	08/11/06	11/08/06	CBI	(S) Raw material intermediate used in the manufacture of dispersions for use in electronic inks	(G) Polymer-stabilized copper chromite
P–06–0718	08/11/06	11/08/06	CBI	(S) Polymerized pigment intermediate used in the manufacture of dispersions for use in electronic inks	(G) Polymer-stabilized carbon black
P–06–0719	08/11/06	11/08/06	CBI	(S) Raw material intermediate used in the manufacture of polymerized pigments	(G) Vinylsilane surface treated copper chromite
P–06–0720	08/11/06	11/08/06	CBI	(G) Reactive intermediate	(G) Alkyl substituted hydroxyl diazene oxide, alkali metal salt

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 07/31/06 TO 08/11/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0721	08/11/06	11/08/06	CBI	(G) Encapsulating additive	(G) Benzaldehyde, polymer with substituted biphenyl and phenol

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 18 NOTICES OF COMMENCEMENT FROM: 07/31/06 TO 08/11/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–1089	08/01/06	07/11/06	(G) Polysiloxane, containing propyl and ethoxy groups
P–04–0112	07/31/06	07/11/06	(G) Polyester polyurethane resin
P–04–0184	07/31/06	07/21/06	(S) Oxirane, methyl-, polymer with oxirane, hexanedioate (2:1), ditetradecyl ether
P–04–0803	08/07/06	07/13/06	(G) Aromatic and aliphatic polyamide
P–05–0333	08/04/06	07/21/06	(G) Urethane acrylate
P–05–0369	07/28/06	07/20/06	(G) Acrylic polymer
P–05–0834	08/09/06	08/01/06	(G) Aqueous polyurethane dispersion
P–06–0003	08/02/06	07/26/06	(G) Alkoxylated benzenedicarboxylic acid derivative
P–06–0009	08/03/06	07/09/06	(G) Amino alkoxy polydimethylsiloxane, hydroxy terminated
P–06–0152	08/09/06	07/10/06	(S) 2-propenoic acid, 2,2-bis[[(1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl ester, polymer with diethenylbenzene and ethenylethylbenzene
P–06–0274	08/02/06	07/24/06	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, esters with polyethylene glycol mono-me ether
P–06–0333	08/03/06	07/18/06	(G) 2-propenoic acid, 2-methyl-, polymers with acrylic acid, et acrylate, me methacrylate
P–06–0382	08/01/06	07/21/06	(G) Polymer of epichlorohydrin, aromatic diol and an alkyl ether amine
P–06–0407	08/07/06	07/20/06	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), sodium salt
P–06–0408	08/07/06	07/20/06	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), sodium salt
P–06–0414	08/07/06	07/12/06	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, phosphinicobis[oxy(2-hydroxy-3,1-propanediyl)] ethers, sodium salts
P–06–0464	08/07/06	07/31/06	(S) 3-decanol
P–06–0465	08/04/06	07/31/06	(G) Tall-oil fatty, alkylamino amides, hydrochloride

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: August 31, 2006.

Eyvone Petty-Callier,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–15091 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0768; FRL–8092–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 14, 2006 to August 25, 2006, consists of the PMNs consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before October 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2006–0768, by one of the following methods.

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0768. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

• *Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0768. 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 regulations.gov or e-mail. The regulations.gov website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room location will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

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I. 43 PREMANUFACTURE NOTICES RECEIVED FROM: 08/14/06 TO 08/25/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0722	08/14/06	11/11/06	Dupont Company	(G) Intermediate raw material for polymer production	(G) Salt of amine with aromatic acid
P–06–0723	08/14/06	11/11/06	Dupont Company	(G) Extrusion compounding resin; molding resin	(G) Aromatic and aliphatic polyamide
P–06–0724	08/14/06	11/11/06	Quest International Flavors and Fragrances, Inc.	(S) Fragrance ingredient	(S) Butanamide, 2-ethyl-*N*-methyl-*N*-(3-methylphenyl)-
P–06–0725	08/14/06	11/11/06	CBI	(S) Ore floatation chemical in mining operations	(G) Propyl heptanol distillation residues
P–06–0726	08/14/06	11/11/06	CBI	(G) Automotive coatings	(G) Cyclical acid, polymer with isocyanate, diols, diacids, alkanolamine, amine salt
P–06–0727	08/14/06	11/11/06	CIBA Specialty Chemicals Corporation	(G) Paper additive	(G) Substituted benzenemethanaminium chloride/ acrylamide/acrylic acid polymer
P–06–0728	08/14/06	11/11/06	Inx International Ink Co.	(G) Open, non-dispersive use	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1.3.3.-trimethyl-, polymer with hexanedioic acid, 1,4-butanediol, 2,2-dimethyl-1.3-propanediol and polypropyleneglycol
P–06–0729	08/14/06	11/11/06	Inx International Ink Co.	(G) Open, non-dispersive use	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1.3.3-trimethyl-, polymer with hexanedioic acid, 3-methyl-1.5-pentanediol, polypropyleneglycol and cyclohexanemethanamine,5-amino-1.3.3-trimethyl-
P–06–0730	08/15/06	11/12/06	Inx International Ink Co.	(G) Open, non-dispersive use	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1.3.3.-trimethyl-, polymer with hexanedioic acid, 3-methyl-1.5pentanediol, and cyclohexanemethanamine, 5-amino-1.3.3-trimethyl-
P–06–0731	08/15/06	11/12/06	CBI	(G) Open, non-dispersive (resin)	(G) 1,4-benzenediamine, N'-(alkyl)-*N*-[4-[(alkyl)amino]phenyl]-*N*-phenyl-
P–06–0732	08/16/06	11/13/06	CBI	(G) Surface treament agent	(G) Fluoropolyether derivative fluoronated polyurethane resin
P–06–0733	08/16/06	11/13/06	CBI	(G) Raw material	(G) Amines branched and linear alkyl
P–06–0734	08/16/06	11/13/06	CBI	(G) Highly dispersive use	(G) Substituted phenol alkenylester
P–06–0735	08/16/06	11/13/06	CBI	(G) Adhesion reduction	(G) Methyl-pyrrilidone distn. residues
P–06–0736	08/16/06	11/13/06	CBI	(G) Adhesion reduction	(G) Butynediol distn. residues
P–06–0737	08/16/06	11/13/06	3M Company	(G) Melt additive	(G) Substituted melamine
P–06–0738	08/16/06	11/13/06	CBI	(G) Crosslinker	(G) Ethanediol tetramethylxylylene diisocyanate polymer
P–06–0739	08/18/06	11/15/06	Degussa Corporation	(G) Adhesive for textile / clothes applications	(G) Aliphatic dicarboxylic acid polymer with alkanediamine and lactam
P–06–0740	08/21/06	11/18/06	Huntsman Corporation	(S) Intermediate for epoxy curing agent	(G) Polyglycol
P–06–0741	08/18/06	11/15/06	CBI	(G) Open non-dispersive coating	(G) Polyurethane acrylate
P–06–0742	08/18/06	11/15/06	CBI	(S) Raw material	(G) Amines branched and linear alkyl
P–06–0743	08/18/06	11/15/06	CBI	(S) Alkylamino hafnium salt usded in chemical vapor deposition methods during the manufacture or processing of semiconductors	(G) Alkylamino hafnium salt
P–06–0744	08/18/06	11/15/06	CBI	(G) Pigment formulation additive	(G) 2-oxepanone, polymer with aziridine and tetrahydro-2*h*-pyran-2-one, alkanoate, compound with phenyloxirane polymer with oxirane mono(dihydrogen phosphate) alkyl ether
P–06–0745	08/18/06	11/15/06	CBI	(G) Additive for release coatings	(G) Siloxanes and silicones, di-alkyl, alkyl 2-[(1-oxo-2-propenyl)oxy]alkoxy

I. 43 PREMANUFACTURE NOTICES RECEIVED FROM: 08/14/06 TO 08/25/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0746	08/21/06	11/18/06	Quest International Flavors and Fragrances, Inc.	(S) Fragrance ingredient	(S) Pyridine, 2-(2,4-dimethylcyclohexyl)-
P–06–0747	08/21/06	11/18/06	CBI	(G) Adhesive additive for open, non-dispersive use	(G) [*N*-(alkylbenzyl)-*N*,*N*-dimethylanilinium] [(halomethylsulfonyl)imide)]
P–06–0748	08/21/06	11/18/06	Huntsman Corporation	(S) Epoxy curing agent	(G) Polyetheramine
P–06–0749	08/21/06	11/18/06	CBI	(G) Biodiesel additive	(S) 2,5-furandione, polymer with 1-hexadecene, .alpha.-methyl-.omega.-(2-propenyloxy)poly(oxy-1,2-ethanediyl) and 1-tetradecene, dodecyl hexadecyl ester
P–06–0750	08/21/06	11/18/06	CBI	(G) Biodiesel additive	(S) 2,5-furandione,polymer with 1-hexadecene, .alpha.-methyl-.omega.-(2-propenyloxy)poly(oxy-1,2-ethanediyl) and 1-tetradecene, lauryl amide
P–06–0751	08/21/06	11/18/06	CBI	(G) Adhesion	(G) Urethane resin
P–06–0752	08/21/06	11/18/06	CBI	(G) Adhesive for electrical parts	(G) Modified imidazole
P–06–0753	08/22/06	11/19/06	CBI	(S) Crosslinking agent for powder coatings	(G) Polymer of isophorone diisocyanate and aliphatic diol/aliphatic dicarboxylic acid
P–06–0754	08/23/06	11/20/06	CBI	(G) Diluent for paint	(G) Propylene glycol mono fatty acid ester
P–06–0755	08/23/06	11/20/06	E. I. Dupont De Nemours and Co.	(G) Catalyst used in polymerization	(S) Titanium phosphate glycolate complex
P–06–0756	08/23/06	11/20/06	CBI	(G) Industrial coatings additive	(G) 2-propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer wiyh alkyl 2-propenoate, ethenylbenzene and 2-hydroxyethyl 2-propenoate, acetate (salt) formate (salt)
P–06–0757	08/23/06	11/20/06	CBI	(S) Organic synthesis intermediate	(G) Spiro[isobenzofuran-1(3*h*), polyheterocycle]-3-one, 3′-chloro-6′-(2,3-hidihydro-3,3,5-trimethyl-1*h*-indol-1-yl)-4,5,6,7-tetrafluro-
P–06–0758	08/23/06	11/20/06	CBI	(S) Organic synthesis intermediate	(G) Polyheterocycle, 2,3-dihydro-3,3,5-trimethyl-, hydrochloride
P–06–0759	08/23/06	11/20/06	CBI	(S) Organic synthesis intermediate	(G) Acetamide, *N*-(4-methylphenyl)-*N*-(alkenyl)-
P–06–0760	08/23/06	11/20/06	CBI	(S) Organic synthesis intermediate	(G) heteropolycycle,1-acetyl-2,3dihydro-3,3,5-trimethyl
P–06–0761	08/23/06	11/20/06	CBI	(G) Component of manufactured consumer article - contained use	(G) Spiro[isobenzofuran-1(3*h*), polyheterocycle]-3-one, 3′-(2,3-dihydro-3,3,5-trimethyl-1*h*-indol-1-yl)-6′-[(2,4-dimethylphenyl)amino]-4,5,6,7-tetrafluro-
P–06–0762	08/23/06	11/20/06	CBI	(S) Organic synthesis intermediate	(G) Polyheterocycle, 2,3-dihydro-3,3,5-trimethyl-
P–06–0763	08/22/06	11/19/06	NA Industries, Inc.	(G) Raw material for cleaner	(S) Aspartic acid, *N*-[(1s)-1,2-dicarboxyethyl]-3-hydroxy-, tetrasodium salt
P–06–0764	08/23/06	11/20/06	Stratcor, Inc.	(G) Infared heat absorbing component in packaging plastics	(S) Vanadium oxide (v4o7)

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 4 NOTICES OF COMMENCEMENT FROM: 08/14/06 TO 08/25/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0556	08/11/06	07/20/06	(G) 2-propenoic acid, 2-methyl-,alkyl ester, telomer with butyl-2-propenoate, 2-(dimethylamino)ethyl 2-methyl-2-propenoate, 1-dodecanethiol, ethenylbenzene, and 2-hydroxyethyl-2-propenoate, carbonoperoxoic acid, 00-(1,1-dimethylethyl) 0-(2-ethylhexyl) ester initiated
P–05–0225	08/11/06	07/18/06	(G) Imidazole, reaction products with trimethoxy[3-(oxiranylmethoxy)propyl]silane
P–06–0401	08/16/06	08/11/06	(G) (A) dihydromethylaryl pyrrolopyrroledione, (B) dihydromethylaryl alkyloxyphenyl pyrrolopyrroledione, (C) dihydroalkyloxyphenyl pyrrolopyrroledione
P–06–0431	08/15/06	07/20/06	(G) Styrenated terpene resin

List of Subjects

Environmental protection, Chemicals. Premanufacturer notices.

Dated: August 31, 2006.

Eyvone Petty-Callier,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–15092 Filed 9–12–06; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

[Public Notice 90]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction act of 1995. Our customers will be able to submit this form electronically. The proposed form may be viewed on our Web site at *http://www.exim.gov/pub/ins/pdf/EIB%2092-30%20August172006_proposed.pdf.*

DATES: Written comments should be received on or before November 13, 2006 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Arnold Chow, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (800) 565–3946, extension 3636. For copies of the proposed form, please direct your request to Solomon Bush, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (800) 565–3946, extension 3353.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers: EIB 92–30 Report of premiums payable for financial institutions only.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to record customer utilization and manage prospective insurance liability relative to risk premiums received.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 150.

Estimated Time Per Respondent: 15 minutes.

Estimated Annual Burden: 450 hours.

Frequency of Reporting or Use: monthly.

Dated: September 7, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK--REPORT OF PREMIUMS PAYABLE FOR FINANCIAL INSTITUTIONS ONLY.

(please type or print all information)

IF NO PREMIUMS PAYABLE, CHECK HERE: ☐

POLICY NUMBER (_____) - _____ Report for period: _____ through _____
(prefix) (number) (month) (day) (year) (month) (day) (year)

INSURED: _____

BROKER: _____

(Contact: Tel: Fax: E-Mail:)

Date Received

USING SAME CODE? (if same for all transactions check box and enter appropriate code or rate here instead of below)

Coverage Type	☐	_____
Obligor Type	☐	_____
Transaction Type	☐	_____
Term Code	☐	_____
Premium Rate	☐	$ _____

ITEM	(a) NAME OF FOREIGN OBLIGOR/STREET/CITY/COUNTRY (b) Exporter Name/Street/City/State/Zip Code (c) Products Exported	Coverage Code	Obligor Code	Transaction Code	Term Code	POLICY ENDORSEMENT NUMBER OF OBLIGOR (See Step 6 on back)	AMOUNT	Premium Rate Per $100	PREMIUM DUE
1.	(a) L/C Ref#→								
	(b)								
	(c)								
2.	(a) L/C Ref#→								
	(b)								
	(c)								
3.	(a) L/C Ref#→								
	(b)								
	(c)								
4.	(a) L/C Ref#→								
	(b)								
	(c)								
	PAGE TOTALS								
	complete only on last page → REPORT TOTALS								

We hereby certify that this report is a complete and accurate declaration of all transactions required to be reported under the terms of the policy and that premiums have been correctly computed and remitted. We understand that Ex-Im Bank's acceptance of this report or the premium due is not an acknowledgment of coverage and does not constitute a waiver of any policy condition or limitation. We understand that, for purposes of policy compliance, this report is not received by Ex-Im Bank until both this report and the premium due hereunder are received.

Signature: _____ Date Prepared: _____ (month) _____ (day) _____ (Year) Page No. ___ of ___ Pages

SEE REVERSE SIDE FOR ADDITIONAL NOTES AND INSTRUCTIONS ON COMPLETING THIS REPORT

COVERAGE TYPES (see Note C. on back)	CODE
Comprehensive Risk Insurance	A
Political Only Risk Only Insurance	B

OBLIGOR TYPES	CODE
Private Sector Obligor or Guarantor	3
Government Sector (Non-Sovereign) Obligor or Guarantor	2
Government Sector (Sovereign) Obligor or Guarantor	1
Eximbank Sole Risk	1

(A "sovereign" is a national government or government entity that the Insurer has determined carries the full faith and credit of the national government. Most government sector companies and/or agencies do not carry the full faith and credit of their government and are therefore considered "non-sovereign" and should be reported as such unless the insurer has determined otherwise.)

TRANSACTION TYPE	CODE
Letters of Credit (non-bulk agricultural products)	A
Letters of Credit (bulk agricultural products)	B
Refinanced Sight Letters of Credit (bulk agricultural products)	B
Refinanced Sight Letters of Credit (non-bulk agricultural products)	C
Bank-Guaranteed (if applicable, use in lieu of any other code)	D
Drafts/Notes/Documents	E
Open Account	F
Pre-Shipment	G
Initial Pre-Presentation Agreement	G
Consignment	H
Pre-Presentation Agreement Extension	I
Due Date Rescheduling	I

TERM (corresponding to Transaction Type being reported)	CODE
Sight Payments (letters of credit)	1
Sight Payments (non-letter of credit)	2
1-60 Days	3
61-120 Days	4
121-180 Days	5
181-270 Days	6
271-360 Days	7
1 1/2 Years	8
2 Years	9
2 1/2 Years	10
3 Years	11
3 1/2 Years	12
4 Years	13
4 1/2 Years	14
5 Years	15
Over 5 Years	16

EIB-92-30 (8/06)

USE SEPARATE REPORT-FORMS WHEN REPORTING PREMIUMS PAYABLE UNDER DIFFERENT POLICIES OR DIFFERENT POLICY NUMBERS

MAKE CHECKS PAYABLE TO: EXPORT-IMPORT BANK OF THE UNITED STATES OR EX-IM BANK
MAIL THIS REPORT WITH YOUR PAYMENT TO: EXPORT-IMPORT BANK OF THE UNITED STATES
DEPT. 22
WASHINGTON, DC 20055

INSTRUCTIONS FOR REPORTING PREMIUMS PAYABLE

Complete the page heading on the front of this report-form, then follow the steps shown below to report each transaction.
(If NO premiums are payable, check the appropriate box on the front of this report-form.)

STEP 1. a) If your loan is directly with the foreign buyer, enter the OBLIGOR NAME, STREET, CITY, COUNTRY of the buyer. If your loan is to a foreign financial institution (including all letter of credit transactions) enter the OBLIGOR NAME, STREET, CITY, COUNTRY of the financial institution. (Please avoid using acronyms if possible.)

Enter the L/C Ref. # (Letter of Credit Reference Number) if you are reporting a letter of credit transaction. If your policy carries the prefix "ELC" and your are reporting a letter of credit transaction or a refinancing of a sight letter or credit, please refer to the Premium Payment Procedure endorsement attached to your policy.

b); c) Enter the EXPORTER NAME, STREET, CITY, STATE, ZIP CODE and a brief description of the PRODUCTS that are being exported by the exporter to the OBLIGOR (please avoid using acronyms if possible). If the OBLIGOR is a financial institution, enter the PRODUCTS being exported by the EXPORTER under the loan agreement or the letter of credit. If you are reporting a shipment of agricultural commodities, please be specific when entering commodity. If your policy carries the prefix "ELC", the exporter name, city, state and products information need to be reported only for insured transactions, not for pre-presentation agreements.

STEP 2. Enter the applicable COVERAGE TYPE CODE from the list given on the front of this report-form. (see Note A and Note C below.)

STEP 3. Enter the applicable OBLIGOR TYPE CODE from the list given on the front of this report-form. **(see NOTE A below.)**

STEP 4. Enter the applicable TRANSACTION TYPE CODE from the list given on the front of this report-form. **(see NOTE A and NOTE B below.)**

STEP 5. Enter the applicable TERM CODE from the list given on the front of this report-form. The TERM CODE should correspond only to the particular TRANSACTION TYPE you are reporting. For example, if you are reporting an initial pre-presentation agreement, indicate the length of the pre-presentation agreement only. **(see NOTE A and NOTE B below.)**

STEP 6. If your policy carries the prefix "ELC" or "EBD", enter the policy endorsement number of the Special Buyer Credit Limit (SBCL) or issuing Bank Credit Limit (IBCL) that pertains to the transaction. The endorsement number can be found at the bottom of the SBCL or IBCL endorsement page, next to the field labelled "Endorsement No.". If the transaction was a supplier credit transaction done under your discretionary credit limit (DCL), then you may leave this box blank. All other policyholders may leave this box blank.

STEP 7. Enter the AMOUNT of the transaction which is applicable to the OBLIGOR (Step 1.a) and the EXPORTER Step 1.b,c). (Use contract price, less downpayment for medium term transactions.)

STEP 8. Enter your PREMIUM RATE. (if your policy has more than one premium rate, or if your premium rate is taken from an SBCL or IBCL endorsement be sure to use the correct premium rate.) **(see NOTE A below.)**

STEP 9. Enter the PREMIUM DUE by applying the AMOUNT you have declared under Step #8 to the applicable PREMIUM RATE. (if you are using the same premium rate for all transactions reported on this form and have checked the box marked "USING SAME CODE", you need only show total premium due at the end of your report.)

STEP 10. Enter PAGE TOTALS and REPORT TOTALS for AMOUNT and for PREMIUM DUE.

STEP 11. Read the paragraph at the bottom of the report-form, then enter your SIGNATURE and DATE PREPARED.

ADDITIONAL NOTES

NOTE A. If you expect to use the same code (or rate) for each transaction recorded on this page, check the box on the front of this report-form marked "USING SAME CODE" then enter the appropriate code (or rate) in the space provided. You need not enter the code (or rate) for each transaction thereafter.

NOTE B. Be certain that your policy allows you to use the TRANSACTION TYPE or TERM being reported.

NOTE C. Under most policies, "Comprehensive" means commercial and political risks coverage. Under the Bank Letter Policy "comprehensive" means "Risks 1, 2, 3, 4 and 5". Under the Financial Institution Buyer Credit Policy "comprehensive" means "Risks 1, 2. 3 and 4".

Under most policies, "Political Only" means that coverage is restricted to political risks. Under the Bank Letter of Credit Policy "political only" means that coverage is restricted to "Risks 1, 2, 3 and 5". Under the Bank Letter of Credit Policy "political only" means that coverage is restricted to "Risks 1, 2, and 3".

SPECIAL POLICIES–REPORTING ADDITIONAL INFORMATION

(If your policy has been endorsed to require you to report information not included on the front of this report-form, you may use the space provided below to report that information. Numbers to the left refer to line-item numbers on the front of this form.)

ITEM

1. _____
2. _____
3. _____
4. _____

EIB-92-30 (8/06)

[FR Doc. 06–7615 Filed 9–12–06; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 31, 2006.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 13, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your comments by e-mail or U.S. mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0249.

Title: Sections 74.781, 74.1281 and 78.69, Station Records.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,600.

Estimated Time per Response: 0.25 hours–1 hour.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 10,318 hours.

Total Annual Cost: $9,240,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 74.781 requires (a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this Chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment or improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 74.1281 requires (a) The licensee of a station authorized under this Subpart shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment of improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.1265(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 78.69 requires each licensee of a CARS station shall maintain records showing the following:

(a) For all attended or remotely controlled stations, the date and time of the beginning and end of each period of transmission of each channel;

(b) For all stations, the date and time of any unscheduled interruptions to the transmissions of the station, the duration of such interruptions, and the causes thereof;

(c) For all stations, the results and dates of the frequency measurements made pursuant to § 78.113 and the name of the person or persons making the measurements;

(d) For all stations, when service or maintenance duties are performed, which may affect a station's proper operation, the responsible operator shall sign and date an entry in the station's records, giving:

(1) Pertinent details of all transmitter adjustments performed by the operator or under the operator's supervision.

(e) When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made as follows:

(1) The time the tower lights are turned on and off each day, if manually controlled.

(2) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(3) In the event of any observed or otherwise known failure of a tower light:

(i) Nature of such failure.

(ii) Date and time the failure was observed or otherwise noted.

(iii) Date, time, and nature of the adjustments, repairs, or replacements made.

(iv) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(v) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(4) Upon completion of the 3-month periodic inspection required by § 78.63(c):

(i) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

(f) For all stations, station record entries shall be made in an orderly and legible manner by the person or persons competent to do so, having actual knowledge of the facts required, who shall sign the station record when starting duty and again when going off duty.

(g) For all stations, no station record or portion thereof shall be erased, obliterated, or willfully destroyed within the period of retention required by rule. Any necessary correction may be made only by the person who made the original entry who shall strike out the erroneous portion, initial the correction made, and show the date the correction was made.

(h) For all stations, station records shall be retained for a period of not less than 2 years. The Commission reserves the right to order retention of station records for a longer period of time. In cases where the licensee or permittee has notice of any claim or complaint, the station record shall be retained until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for filing of suits upon such claims.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15068 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 13, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1 C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0580.

Title: Section 76.1710, Operator Interests in Video Programming.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,500.

Estimated Time per Response: 15 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 22,500 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1710 requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15069 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 28, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 13, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0292.

Title: Part 69—Access Charges.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,250.

Estimated Time Per Response: .75–5 hours.

Frequency of Response: Monthly reporting requirement and third party disclosure requirement.

Total Annual Burden: 11,250 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association (NECA). The Commission has revised this information collection because certain rules were eliminated which discontinued the on occasion, biennial, annual and semi-annual reporting requirements. Only monthly and third party disclosure requirements remain under this OMB control number. The information is used to compute charges in tariffs for access service (or origination and termination) and to computer revenue pool distributions.

OMB Control No.: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,471.

Estimated Time per Response: .50–100 hours.

Frequency of Response: On occasion, annual, quarterly, and other (one-time) reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 117,337 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting, recordkeeping and third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. In CC Docket No. 96–128, the Commission promulgated rules and reporting requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things the rules: (1) establish fair compensation for every completed intrastate and interstate payphone call; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone.

OMB Control No.: 3060–0853.

Title: Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries; Receipt of Service Confirmation Form; and Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form.

Form Nos.: FCC Forms 479, 486 and 500.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 45,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Total Annual Burden: 62,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Schools and libraries receiving Internet access and internal connection services supported by the schools and libraries universal service support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure in compliance with the Children's Internet Protection Act (CIPA). Administrative Authorities for Billed Entities and their consortia generally must submit signed certifications on FCC Form 479 to the Billed Entity, or to their consortium, certifying as to the status of the Billed Entity in its compliance with CIPA. Billed Entities must use the FCC Form 486 to authorize payment of invoices from service providers, indicate approval of technology plans, and indicate compliance with CIPA. Billed Entities use the FCC Form 500 to make adjustments to previously filed forms. The FCC forms in this collection have been revised to reflect the most current information available, added updated language to the forms and instructions, and reflect the most current burden information. In addition, the FCC Form 486 has added a certification that the technology plan was approved before the receipt of services (Schools and Libraries Fifth Report and Order in FCC 04–190).

OMB Control No.: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

Form Nos.: FCC Forms 472, 473 and 474.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 21,200.

Estimated Time per Response: 1—1.5 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirement.

Total Annual Burden: 133,650 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission adopted rules in May 1997 providing discounts on telecommunications services, Internet access, and internal connections for eligible schools and libraries under the Schools and Libraries Universal Service program. FCC Forms 472, 473, and 474 are utilized to administer these requirements and obligations. The purpose of FCC Form 472 is to establish the process and procedure for an eligible entity to seek reimbursement from the service provider for the discounts on services paid in full. The purpose of FCC Form 473 is to establish that the participating service provider is eligible to participate in the program. The purpose of FCC Form 474 is to establish the process and procedure for a service provider to seek payment for the discounted costs of services it provided to Billed Entities for eligible services. The forms and instructions in this collection will be modified to utilize a format previously approved by OMB in 1998 and 2001, but have been revised to reflect the most current burden information available with updated language to the forms and instructions. The FCC Form 472 also contains a revision reflecting the timing of reimbursements. Service providers must forward reimbursement payments to a school or library within 20 business days, rather than 10 calendar days, of receipt of such funds form the Universal Service Administrative Company (USAC), (Schools and Libraries Second Report and Order in FCC 03–101). And, in addition, the FCC Form 473 has added a certification that the service provider has complied with the universal service competitive bidding rules (Schools and Libraries Fifth Report and Order in FCC 04–190). These revised forms and instructions will assist in the implementation of the Schools and Libraries Universal Service Program. As a result, the Commission is now seeking OMB approval for the changes to the forms and instructions.

OMB Control No.: 3060–0952.

Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147 and Fifth NPRM, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,400.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The reporting requirements contained in this collection implement Section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. In CC Docket No. 98–147, the Commission sought comment on whether requesting carriers should receive demographic and other information from incumbent local exchange carriers (ILECs) to determine whether they wish to collocate at particular remote terminals. In CC Docket No. 96–98, comment was sought on whether ILECs should provide certain notifications to competing carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15071 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 6, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 13, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0947.

Title: Section 101.1327, Renewal Expectancy for EA Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 18,820.

Estimated Time per Response: .50–20 hours.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 284,653 hours.

Total Annual Cost: $18,820.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change

in reporting requirement) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The information required by Section 101.1327 is used to determine whether a renewal applicant of a Multiple Address System has complied with the requirement to provide substantial service by the end of the ten-year license term. The FCC uses the information to determine whether the applicant's license will be renewed at the end of the license period.

OMB Control No.: 3060–0531.

Title: Local Multipoint Distribution Service (LMDS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 423.

Estimated Time Per Response: .25–20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,394 hours.

Total Annual Cost: $376,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a revision after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The information requested in Parts 1, 2, and 101 of the Commission's rules establish rules and policies for Local Multipoint Distribution Service (LMDS). The information is used by the Commission staff in carrying out its duties to determine the technical, legal and other qualifications of applicants to operate and remain licensed to operate a station in the LMDS. Specifically, the frequency coordination information requested pursuant to Section 101.103 of the Commission's Rules is necessary to facilitate the rendition of communication service on an interference-free basis in each service area. The frequency coordination procedures ensure that LMDS applicants and licensees have the information necessary to cooperate in the selection and use of frequencies assigned in order to minimize interference and thereby obtain the most effective use of the spectrum. The information is also necessary for the Commission staff to resolve interference conflicts that cannot be settled between or among the affected applicants and licensees. For LMDS licensees seeking renewal, the information requested pursuant to Section 101.1011 of the Commission's Rules is necessary for the Commission staff to determine whether a licensee has provided sufficient evidence of substantial service during its license term and has substantially complied with the Communications Act and with applicable Commission rules and policies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15195 Filed 9–12–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011117–042.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S and Safmarine Container Lines NV; ANL Singapore Pte Ltd.; CMA–CGM, S.A.; Compagnie Maritime Marfret S.A.; Hamburg-Süd; Hapag-Lloyd AG; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes CP Ships USA, LLC and Australia-New Zealand Direct Line as parties to the agreement.

Agreement No.: 011776–003.

Title: HLAG/CSAV Slot Charter Agreement.

Parties: Compañia Sud Americana de Vapores S.A. and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes CP Ships USA, LLC as a party to the agreement, adds Hapag-Lloyd AG, and restates and renames the agreement.

Agreement No.: 011839–004.

Title: Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd AG and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Hapag-Lloyd's name to Hapag-Lloyd AG.

Agreement No.: 011878–002.

Title: HLAG/MOL Slot Charter Agreement.

Parties: Hapag-Lloyd AG and Mitsui O.S.K. Lines, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes CP Ships USA, LLC as a party to the agreement, adds Hapag-Lloyd AG, and restates and renames the agreement.

Agreement No.: 011891–002.

Title: Hapag-Lloyd/NYK Space Charter Agreement.

Parties: Hapag-Lloyd AG and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes Hapag-Lloyd's name and updates contact information for NYK.

Agreement No.: 011925–001.

Title: WHL/Norasia/Sinolines Slot Exchange and Sailing Agreement.

Parties: Wan Hai Lines Ltd.; Norasia Container Lines Limited; and Sinotrans Container Lines Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street, Suite 850; Irvine, DA 92614.

Synopsis: The agreement adds Sinotrans Container Lines Co., Ltd. as a party to the agreement and clarifies various terms.

By Order of the Federal Maritime Commission.

Dated: September 8, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–15210 Filed 9–12–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320

Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 13, 2006.

ADDRESSES: You may submit comments, identified by structure proposal or an individual reporting form number (FR Y–10, FR Y–10F, FR Y–10S, FR 2058, FR Y–6, or FR Y–7), by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

Report titles: Report of Changes in Organizational Structure, Report of Changes in FBO Organizational Structure, Supplement to the Report of Changes in Organizational Structure, Notification of Foreign Branch Status, Annual Report of Bank Holding Companies, and Annual Report of Foreign Banking Organizations.

Agency form numbers: FR Y–10 (formerly FR Y–10, FR Y–10F, FR Y–10S, and FR 2058), FR Y–10E, FR Y–6, and FR Y–7

OMB control numbers: 7100–0297, 7100–0069, 7100–0124, and 7100–0125

Frequency: Event–generated, annual

Reporters: Bank holding companies (BHCs), foreign banking organizations (FBOs), member banks, Edge and agreement corporations

Annual reporting hours: FR Y–10, 16,608 hours; FR Y–10E, 1,384 hours; FR Y–6, 27,069 hours; FR Y–7, 900 hours

Estimated average hours per response: FR Y–10, 1.00 hour; FR Y–10E, 0.50 hours; FR Y–6, 5.25 hours; FR Y–7, 3.50 hours

Number of respondents: FR Y–10 and FR Y–10E, 2,768; FR Y–6, 5,156; FR Y–7, 257

General description of report: These information collections are mandatory under the Federal Reserve Act, the BHC Act, and the International Banking Act (12 U.S.C. 248 (a)(1), 321, 601, 602, 611a, 615, 1843(k), 1844(c), 3106, and 3108(a)) and Regulations K and Y (12 CFR 211.13(c), 225.5(b), and 225.87). Individual respondent data are not considered confidential; however, respondents may request confidential treatment pursuant to Sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The FR Y–10 is an event–generated information collection submitted by top–tier domestic BHCs, including financial holding companies (FHCs), and state member banks unaffiliated with a BHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y–10F is an event–generated information collection submitted by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S. banking laws and regulations and to determine the risk profile of the FBO.

The FR Y–10S is a supplement to the FR Y–10. The Federal Reserve uses the data to assess the effectiveness of banking organizations' compliance with the Sarbanes–Oxley Act of 2002 and enhance the Federal Reserve's ability to evaluate regulatory data by reconciling it accurately with market data reported to shareholders.

The FR 2058 is an event–generated information collection submitted by member banks, BHCs, and Edge and agreement corporations to notify the Federal Reserve of the opening, closing, or relocation of a foreign branch. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign branches of U.S. banking organizations.

The FR Y–6 is an annual information collection submitted by top–tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company

compliance with the provisions of the Bank Holding Company Act (BHC Act) and Regulation Y (12 CFR 225).

The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

Current actions:

A copy of the draft reporting forms will be made available, within seven days after publication of this notice, on the Federal Reserve Board's public Web site at: http://www.federalreserve.gov/boarddocs/reportforms/review.cfm under "Information Collections Out for Public Comment."

Revisions Effective December 31, 2006

SEC Reporting Status (FR Y–10S Schedule A) and Committee on Uniform Security Identification Procedures (CUSIP) Number (FR Y–10S Schedule B)

The Federal Reserve proposes to revise Schedule A of the FR Y–10S (1) to require data as of December 31, 2006, for reportable entities established in 2006 and reportable entities that have experienced a change since December 31, 2005, and (2) to modify the option for suspension to include termination of reporting requirements. Also, instructional changes to both Schedule A and B would be made to address questions from respondents that arose during the first data collection. In particular, the instructions would be clarified with respect to CUSIP data for, acquired entities, and the largest nonbank subsidiary and the elimination of the reference to CUSIP data for Canadian Companies.

FR Y–6 and FR Y–7 Certification

The Federal Reserve proposes to revise the certification to require the authorized official to attest that the data have been prepared in conformance with the instructions and the data are true and correct to the best of the authorized official's knowledge and belief. This proposed change is similar to recent changes to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128).

FR Y–6 and FR Y–7 Public Web Address

The Federal Reserve proposes to add to the cover page a requirement for BHCs and FBOs to provide their public web addresses. This contact information would be useful to the public and to the Federal Reserve. The Federal Reserve finds it helpful to review the web sites to verify certain data submitted by BHCs and FBOs (such as annual reports to shareholders, officer and director information, subsidiary information, branch information, and press releases). For FBOs and smaller BHCs, it is difficult to find the web addresses through Internet search engines due to institutions with similar names. Web addresses are collected on the FR Y–9C from BHCs, but the addresses reported are specific to the pages that display risk disclosures. Because of the limited purpose, only about forty BHCs currently submit this information on the FR Y–9C.

FR Y–6 Organization Chart

The Federal Reserve proposes to add to Report Item 2: Organization Chart an annual requirement for institutions to verify a list of domestic branches that the Federal Reserve has on file for the institution. The list of domestic branches would include those of depository institutions and Edge and agreement corporations held directly or indirectly by the respondent. The Federal Reserve would provide the branch data to the institution and the institution would be required to annotate the data in the format provided. The Federal Reserve plans to develop an automated tool for institutions to verify and update their domestic branch data and specifically requests comment on whether this tool would be useful to respondents.

Revisions Effective June 30, 2007

Combining the FR Y–10, FR Y–10F, FR Y–10S, and FR 2058 Reporting Forms

The Federal Reserve proposes to combine the four existing reporting forms into one to streamline the data submission process. All report titles, form numbers, and OMB control numbers would be combined as the Report of Changes in Organizational Structure, FR Y–10, OMB No. 7100–0297. In combining the reporting forms and instructions, the Federal Reserve intends to retain all data items not specifically mentioned in this notice. All data items would be collected on an event–generated basis, including data previously submitted annually on Schedule A of the FR Y–10S. The substantive proposed changes to the data submitted are described in detail below. Also, minor clarifications would be made to certain data items to address recurring questions from respondents. The Federal Reserve would request institutions to provide data on the FR Y–10 for any changes not previously reported, occurring between January 1, 2007 and June 30, 2007, by July 30, 2007. Any event–generated transaction that occurs after June 30, 2007, would be submitted on the combined FR Y–10 within 30 days.

Proposed FR Y–10 Banking and Nonbanking Schedules

Consolidation Question (current data item 8). The Federal Reserve proposes to delete the question regarding whether the company is consolidated in the respondent's financial statements.

100% Owned Entities (proposed data item 11.a). On the Nonbanking Schedule only, the Federal Reserve proposes to add a box to collect data for wholly–owned entities. The current data item (9.a on the FR Y–10F and 10.a on the FR Y–10) requires these entities to be identified as 80 percent or more owned. The Federal Reserve is unable to determine whether a particular subsidiary is wholly–owned, which has implications for the supervisory process.

Proposed FR Y–10 Domestic Branch Schedule

The Federal Reserve proposes to add a schedule for data on domestic branches and offices of depository institutions held directly or indirectly and domestic branches of Edge and agreement corporations. Top–tier BHCs, state member banks that are not controlled by a BHC, and Edge and agreement corporations would be required to submit this information. Data would not be submitted by national and nonmember banks that are unaffiliated with a BHC.

The Federal Reserve proposes to collect branch data on an event–generated basis, parallel to the other schedules on the FR Y–10, within thirty calendar days. As noted above, BHCs would verify a list of domestic branches for each depository institution within their organization in the FR Y–6 report, beginning in December 2006. The Federal Reserve would request BHCs to provide data on the FR Y–10 for any branch openings, acquisitions, sales, closings or relocations, or changes to service type or popular name, occurring between January 1, 2007 and June 30, 2007, by July 30, 2007. Thereafter, institutions would be required to report events within 30 days; however, they would be permitted to combine multiple transactions into a single monthly filing.

Collecting domestic branch data on an event–generated basis would ensure that the Federal Reserve will be using data that accurately reflect current market conditions. In the analysis of proposed mergers, or when performing

Community Reinvestment Act examinations, the Federal Reserve will be able to assess banking presence in the relevant markets. Currently, such analysis is not possible.

Data would be submitted for the following branches and offices:

1. Full service (brick & mortar, retail) ' traditional offices.
2. Electronic Banking ' offices where Internet and other similar deposits are booked.
3. Limited service (military, drive–through, mobile or seasonal, and retail) – limited, but often take or include deposits.
4. Loan production and consumer credit – limited, normally nondeposit, but extend credit.
5. Trust – limited and nondeposit.
6. Administrative (administrative, contractual, messenger) – all other limited and nondeposit.

Competitive analysis is required by the BHC Act (sections 3(c) (1) and (2)) and the Bank Merger Act (section 18(c)). The purpose of collecting data in these six categories is to gain accurate information regarding the degree of each institution's market presence in local markets. Categories 1 and 3 are branches that take deposits and directly serve the area where they are located. Categories 2 and 5 are also deposit–taking branches but their deposits are likely to have originated from consumers in locations other than where the branch is located, implying that branch presence in the market may not indicate service in that market. The inclusion of a separate category for loan production and consumer credit offices is intended to capture retail bank activity, which may be substantial, in markets where the institution has no deposit–taking branches. The last category captures those locations not elsewhere classified. The proposal to classify all branches into six categories is based upon the current collection of branch data in the Federal Deposit Insurance Corporation's (FDIC's) Summary of Deposits (SOD) Report (OMB No. 3064–0061). Each of the current SOD classifications can be mapped directly into one of the proposed categories. This should reduce burden on respondents. The Federal Reserve requests specific comment on whether these categories are the best way to break out service level types.

Branch data are essential for carrying out the Federal Reserve's statutory responsibility to analyze the competitive effects of proposed bank mergers and acquisitions. In many bank merger applications, applicants have argued that the competitive analysis should take into account the precise activities at a given branch. This includes cases where they have argued for the exclusion of deposits or branches on the grounds that the deposits are non–local in origin. Similarly, applicants have argued that other firms are competitors by virtue of the presence of loan production offices. The lack of data in these cases has hindered analysis.

The Federal Reserve System relies heavily on domestic branch data for economic and market research as well as policy. Many research projects that use branch data are designed to enhance the Federal Reserve's understanding of the relationship between banking market structure (as measured by the number of firms operating in a market, market concentration, entry, and exit), firm behavior (prices and service quality), and performance (profitability). Branch data have been used for a variety of additional market studies, including several pertaining to lending patterns of banks. For the Survey of Small Business Finances (FR 3044; OMB No. 7100–0262), branch data are critical in determining distances between firms and their banks and for creating Herfindahl indexes (which measure industry concentration). Accurate address information is increasingly important as the technology for geocoding data improves.

A recent example of using branch data for research and policy work was in evaluating the impact of Hurricane Katrina on the banking system immediately after the disaster. The Federal Reserve also provided geocoded maps of branches in the affected areas to the Red Cross. Although Hurricane Katrina happened in August 2005, the most current universe of branch data available for analysis was as of June 2004. Better branch data would have enabled economists to incorporate branch structure changes between June 2004 and August 2005 into their analysis and policy decisions.

The Federal Reserve's Home Mortgage Disclosure Act (HMDA) system uses branch information to determine the reporting panel. In addition, HMDA (OMB No. 7100–0147) and CRA (OMB No. 7100–0197) data are geocoded and numerous studies and reports regarding fair lending practices are based on the HMDA files that include branch data.

This proposal would replace most of the current process for gathering domestic branch structure data, which is inadequate. Branch data for domestic state member banks are communicated to the Federal Reserve primarily through the application process. Information for all other domestic bank branches (branches of national and nonmember banks) is obtained by searching FDIC and Office of the Comptroller of the Currency bulletins. The Federal Reserve needs a formal information collection to ensure that these data are consistent, complete, and updated on the same frequency.

Collecting branch data for the institutions associated with top–tier BHCs, state member banks unaffiliated with a BHC, and Edge and agreement corporations would cover 95 percent of the banking branches and 82 percent of banking and thrift branches.

Creating the FR Y–10E Supplement

The Federal Reserve also proposes to create a free–form supplement that would be used to collect additional structural information deemed to be critical and needed in an expedited manner. This reporting form would be called the FR Y–10E. The Federal Reserve proposes to create a free–form supplement to the FR Y–10 so that, should there be an immediate need for certain critical organizational structural information, the necessary data could be collected on this supplement at the earliest practicable date. Such a need could arise, for example, because of a statutory change or an unexpected market event. Such a supplement currently exists for financial data on the FR Y–9C. The Federal Reserve expects to use this supplement infrequently and only when there is not sufficient time to take proposed changes through the full clearance process.

Board of Governors of the Federal Reserve System, September 7, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–15123 Filed 9–12–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Lloyds TSB Group and Lloyds TSB Bank, both of London, England, to engage de novo through a wholly-owned subsidiary, Scottish Widows Investment Partnership, Ltd., New York, New York in investment advisory activities pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–15193 Filed 9–12–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Tuesday, September 19, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–7643 Filed 9–8–06; 5:15 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 25 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—08/14/2006			
20061432	Valassis Communications, Inc	ADVO, Inc	ADVO, Inc.
20061492	Westerra Credit Union	Gateway Credit Union	Gateway Credit Union.
20061508	Motient Corporation	SkyTerra Communications, Inc	SkyTerra Communications, Inc.
20061512	CSM nv	Sam L. Stolbun and Alana R. Spiwak (Spouses).	CGI Desserts, Inc.
20061514	Thoma Cressey Fund VII, L.P	Excelligence Learning Corporation	Excelligence Learning Corporation
20061516	Dennis Mehiel	LINPAC Group Limited	LINPAC America Inc., LINPAC Inc., PICNAL Acquisition Inc.
20061520	J.P. Morgan Chase & Co	NCO Group, Inc	NCO Group, Inc.
20061521	Genworth Financial, Inc	AssetMark Investment Services, Inc	AssetMark Investment Service, Inc.
20061523	Paul Tudor Jones II	First Avenue Networks, Inc	First Avenue Networks, Inc.
20061525	AXA S.A	Credit Suisse Group	Winterthur Schweizerische, Versicherungs-Gesellschaft
20061535	Silver Lake Partners II, L.P	IPC Acquisition Corp	IPC Acquisition Corp.
20061536	Sunoco Logistics Partners L.P	Sunoco, Inc	Sunoco, Inc.
20061537	GGC Investment Fund II, L.P	Symphony Technology Fund II–A, L.P	GERS Holdings, Inc.
20061542	Applied Micro Circuits Corporation	Quake Technologies, Inc	Quake Technologies, Inc.
20061544	Brachem Acquisition SCA	Brenntag-Interfer (BC) SCA	Brenntag Investor Holding GmbH.
20061547	Robert G. Burton, Sr	Cenveo, Inc	Cenveo, Inc.
20061549	Parthenon Investors III, LP	William Blair Capital Partners VII QP, L.P.	PRIMIS Marketing Group, Inc.
Transactions Granted Early Termination—08/15/2006			
20061456	Owens & Minor, Inc	McKesson Corporation	McKesson Medical Surgical Inc.

Trans No.	Acquiring	Acquired	Entities
20061538	Honda Motor Co., Ltd	XM Satellite Radio Holdings, Inc	XM Satellite Radio Holdings, Inc.
Transactions Granted Early Termination—08/16/2006			
20061541	Inverness Partners II L.P	The Hartford Financial Services Group, Inc.	Omni Insurance Group, Inc.
20061551	Eyk Van Otterloo	Scott M. Spangler	Chemonics International, Inc.
Transactions Granted Early Termination—08/17/2006			
20061454	Umbrella Holdings, LLC	A. Jerrold Perenchio	Univision Communications, Inc.
20061522	American International Group, Inc	Advanced Disposal Services, Inc	Advanced Disposal Services, Inc.
20061585	Boyd Gaming Corporation	Stephen F. Snyder	Summersport Enterprises, LLP, The Aragon Group, Inc.
Transactions Granted Early Termination—08/18/2006			
20061513	CHC Inc	US BioEnergy Corporation	US BioEnergy Corporation.
20061552	Hercules Holding II, LLC	HCA, Inc	HCA Inc.
20061560	Motorola, Inc	Broadbus Technologies, Inc	Broadbus Technologies, Inc.
20061563	Wolters Kluwer nv	United Communications Group, LP	ATX II LLC
20061570	Viceroy Acquisition Corporation	Eastman Chemical Company	Eastman SE, Inc.
20061573	Hellman & Friedman Capital Partners V, L.P.	Jay Alix	AlixPartners, LLP
20061577	Schurz Communications, INc	Media General, Inc	CBS Affiliate KWCH (Hutchinson, Kansas), CBS Satellite KBSD (Ensign, Kansas), CBS Satellite KBSH (Hays, Kansas), CBS Satellite KBSL (Goodland, Kansas)
20061578	ConvergEx Holdings, LLC	Eze Castle Software, Inc	Eze Castle Software, Inc.
20061579	Grupo Modelo, S.A. de C.V	Crown Imports LLC	Crown Imports LLC
20061582	ConvergEx Holdings, LLC	The Bank of New York Company, Inc	B-Trade Services LLC; G-Trade Services Ltd.
Transactions Granted Early Termination—08/21/2006			
20061472	Primedix Health Systems, Inc	Radiologix, Inc	Radiologix, Inc.
20061586	SAS Rue La Boétie	Garry B. Crowder	Ursa Capital LLC.
Transactions Granted Early Termination—08/22/2006			
20061526	Marvell Technology Group Ltd	Intel Corporation	Intel Corporation.
20061581	ABRY Partners IV, L.P	Gordon Gray 1956 Living Trust	G Force, LLC.
Transactions Granted Early Termination—08/25/2006			
20061555	Sageview Capital Master, Ltd	Invitrogen Corporation	Invitrogen Corporation.
20061556	Orthofix International N.V	Blackstone Medical, Inc	Blackstone Medical, Inc.
Transactions Granted Early Termination—08/28/2006			
20061545	Airgas, Inc	American Capital Strategies, Ltd	Aeriform Corporation.
Transactions Granted Early Termination—08/29/2006			
20061558	Columbia Capital Equity Partners III (QP), L.P.	SkyTerra Communications, Inc	SkyTerra Communications, Inc.
20061596	HCC Insurance Holdings, Inc	Allianz Aktiengesellschaft	Allianz Life Insurance Company of North America.
20061598	GGC Investment Fund II, L.P	Jonathan B. Eager	CCS Holdings, LLC.
20061599	International Business Machines Corporation.	MRO Software, Inc	MRO Software, Inc.
20061600	Time Warner Inc	James Monroe III	Xspedius Communications, LLC.
20061601	Kaslion S.àr.l., a to-be-formed Luxembourg S.àr.l.	Koninklijke Phillips Electronics N.V	Phillips Semiconductors International B.V.
20061604	Lion Capital Fund I, L.P	Kettle Foods Holdings, Inc	Kettle Foods Holdings, Inc.
20061605	TA X L.P	Professional Warranty Services Corporation.	Professional Warranty Services Corporation.
20061606	U.S. Bancorp	SunTrust Banks, Inc	SunTrust Bank.
20061608	Lenard Liberman	Entravision Communications Corporation	Entravision Holdings, LLC, Entravision-Texas Limited Partnership.
20061610	Cortina Systems, Inc	Intel Corporation	Intel Corporation.
20061612	Crown Castle International Corp	First Avenue Networks, Inc	First Avenue Networks, Inc.
20061613	Mattel, Inc	Radice Games Limited	Radice Games Limited.
20061621	Kelso InvestmentAssociates VII, L.P	Renfro Corporation	Renfro Corporation.

Trans No.	Acquiring	Acquired	Entities
20061625	New Mountain Partners II, L.P	Connextions, Inc	Connextions, Inc.
20061626	Oak Investment Partners XI, L.P	Airspan Networks Inc	Airspan Networks Inc.
20061627	ABRY Partners V, L.P	Cast & Crew Payroll, Inc	BTL Payments, LLC, B-T-L Payrolls, LLC, BTL/WD Studio Products, LLC, Cast & Crew Associated Payroll, LLC, Cast & Crew BV Payroll, LLC, Cast & Crew Cable Payroll, LLC, Cast & Crew Capital, Inc., Cast & Crew/Cinehub, LLC, Cast & Crew Entertainment Services, Inc., Cast & Crew Film Services, LLC, Cast & Crew Production Payroll, LLC, Cast & Crew Production Services, LLC, Cast & Crew Studio Payroll LLC, Cast & Crew Talent Services, LLC, Cast & Crew WD Payroll, LLC, Cast & Crew WD Studio Payroll, LLC, C&C–DTV Payroll, LLC, C&C–DTV Production Payroll, LLC, C&C–WD Film Payroll, LLC, C&C WD Film Services, LLC, C&C–WD Studio Productions, LLC, C.D. Payroll, LLC.
20061630	Small Smiles Holding Company, Inc	FORBA, LLC	FORBA NY, LLC.
20061634	Bain Capital Fund IX, L.P	Trevor Lloyd	Yellowstone Holding Company.
20061636	SFK Pulp Fund	AFR Holdco, Inc	American Fiber International of New York, Inc., American Fiber Resources LLC, Great Lakes Pulp Company, Pulp & Paper Holdco, Inc.
20061638	Bank of America Corporation	Allegacy Federal Credit Union	FIA Card Services, N.A.
20061643	Vector Capital III, L.P	WatchGuard Technologies, Inc	WatchGuard Technologies, Inc.
Transactions Granted Early Termination—08/30/2006			
20061565	ValueAct Capital Master Fund, L.P	MDS, Inc	MDS, Inc.
20061632	EPCOR Power L.P	ASP III Alternative Investments, L.P	Primary Energy Ventures LLC.
20061650	Nokia Corporation	Loudeye Corp	Loudeye Corp.
Transactions Granted Early Termination—08/31/2006			
20061511	Greif, Inc	Riverside XII Holding Company (Delta) L.P.	Delta Petroleum Company, Inc.
20061562	Novartis AG	Momenta Pharmaceuticals, Inc	Momenta Pharmaceuticals, Inc.
20061568	ProQuest Company	Trevor Lloyd	Dealer Computer Services, Inc.
20061592	A.M. Castle & Co	H.I.G. Transtar, Inc	Transtar Intermediate Holdings #2, Inc.
Transactions Granted Early Termination—09/01/2006			
20061624	Sageview Capital Master, Ltd	Guitar Center, Inc	Guitar Center, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–7610 Filed 9–12–06; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Modified OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Once this notice is published in the **Federal Register**, the Office of Government Ethics will promptly submit to the Office of Management and Budget (OMB) a proposed modified version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report form (hereafter, OGE Form 450) for review and three-year extension of approval under the Paperwork Reduction Act (PRA). After that approval, the modified form would be used by covered departments and agency employees starting January 1, 2007.

In August of 2005, the Office of Government Ethics published a first round paperwork notice that it intended to modify the OGE Form 450 to improve its clarity and design and to change in part the information that it collects. Because OGE received so many helpful comments in response to that notice, it significantly redesigned the proposed new OGE Form 450 and published another first round paperwork notice on March 17, 2006, in order to provide a further comment period. OGE received a number of comments on the March 2006 notice and has made a few minor

changes to the proposed modified form in response.

DATES: Comments by the public and agencies on the proposal are again invited and should be received by October 13, 2006.

ADDRESSES: Comments should be sent to Brenda Aguilar, the OMB Desk Officer for OGE, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202–395–7316; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Paul D. Ledvina, Records Officer, Information Resources Management Division, Office of Government Ethics; telephone: 202–482–9281; TDD: 202–482–9293; fax: 202–482–9237; e-mail: *pdledvin@oge.gov*. A copy of the proposed modified OGE Form 450 may be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The OGE Form 450 (OMB control # 3209–0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the Federal Government executive branch departments and agencies. Agency ethics officials then use the completed OGE Form 450 reports to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990, 3 CFR, 1990 Comp., pp. 306–311, at p. 308), made OGE responsible for establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public financial disclosure under the Ethics in Government Act of 1978 (the Ethics Act), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act, 5 U.S.C. app., sec. 107(a), further provided authority for OGE, as the supervising ethics office for the executive branch of the Federal Government, to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The OGE Form 450, and the underlying executive branchwide financial disclosure regulation (5 CFR part 2634), constitute the basic reporting system that OGE has prescribed for such confidential financial disclosure in the executive branch.

The Privacy Act Statement for the OGE Form 450 references the OGE/GOVT–2 executive branchwide Privacy Act system of records. The information about this system of records is located on the OGE Web site, *http://www.usoge.gov*. The Web site user should click on the "FOIA" heading on the left side of the home page. The user should then scroll to the bottom of the page. Under the heading "Links to Other Official Documents" the user will see links to the PDF, HTML and TXT formats of the most recent Privacy Act Records Systems.

OGE has promulgated a number of changes to the regulation on confidential financial disclosure, 5 CFR part 2634, subpart I. These amendments will become effective on January 1, 2007. See 71 FR 28229–28239 (May 16, 2006). The amendments change, in several ways, the body of information that filers are required to report on the OGE Form 450. For example, the new regulation eliminates the requirement to report several types of assets and liabilities, such as diversified mutual funds and mortgages on residential rental property.

In August 2005, OGE published a first round paperwork notice of a significant modification to the OGE Form 450. See 70 FR 47204–47206 (August 12, 2005). Because OGE received so many helpful comments in response to that notice, it significantly redesigned the proposed report form and published, in March 2006, another first round paperwork notice announcing that it intended to amend the OGE Form 450. See 71 FR 13848–13850 (March 17, 2006). This notice discusses only those comments received in response to the March 2006 paperwork notice.

Proposed Modifications to the Form

OGE's goal, in addition to reflecting the regulatory amendments to 5 CFR part 2634 that will become effective on January 1, 2007, is to make the OGE Form 450 easier to complete electronically. For example, because it is much easier to fill in a form electronically when it appears in a portrait orientation, we have proposed changing the form's orientation. Additionally, the ability to save an electronic copy of the completed report permits the filer to use it in subsequent filing cycles, without retyping information that has not changed. The proposed form provides enough space for filers to type at least two lines of data in each block and provides agencies with the option to accept digital signatures. Many agency ethics officials have told us that filers make errors on the current OGE Form 450 because they do not read the attached instructions. On the proposed OGE Form 450, the instructions are integrated within the respective response areas.

The proposed modifications to the OGE Form 450 reflect the changes in the confidential financial disclosure regulation. Generally, these changes to the information that will have to be reported on the OGE Form 450 include: Eliminating the reporting of diversified mutual funds, eliminating dates of honoraria, eliminating dates of agreements and arrangements (other than those for future employment), and eliminating the reporting of types of income that assets earned (i.e., dividends, capital gains, or interest), and revising reporting requirements relating to liabilities by eliminating the requirement to report student loans, mortgages on rental property, and credit card debt if the loans are granted on terms made available to the general public.

Also, OGE is proposing to incorporate in the modified OGE Form 450 the new aggregation threshold of more than $305 for the reporting of gifts and travel reimbursements received from one source during the year by regular employee annual filers, with an exception for any items valued at $122 or less that are not counted toward the overall threshold. These new thresholds are based on the General Services Administration's (GSA's) increase in "minimal value" under the Foreign Gifts and Decorations Act to $305 or less for 2005–2007, to which the thresholds are linked by the Ethics Act and OGE regulation. See GSA's redefinition at 70 FR 2317–2318 (pt. V) (January 12, 2005), section 102(a)(2)(A) and (B) of the Ethics Act, OGE's regulatory adjustment of the gifts/reimbursements thresholds for both public and confidential reports at 70 FR 12111–12112 (March 11, 2005), and OGE DAEOgram DO–05–007 of March 17, 2005, all available on OGE's Web site at *http://www.usoge.gov*.

Finally, OGE is proposing to update the OGE Form 450's Privacy Act Statement summary of the sixth listed routine use (see OGE's notice of revised Privacy Act records systems as published at 68 FR 3097–3109 (January 22, 2003) and routine use "f" at p. 3102 in particular).

Analysis of General Comments Received

OGE received comments on the proposed revised OGE Form 450 from fourteen executive branch agencies and one Federal Government employee association. Several of the agencies provided multiple comments. Based on these comments, a few minor modifications were made to the proposed report form.

Several of the comments that were received seem to concern the proposed report's application to various aspects of the regulation that will be superseded by the above-mentioned amendments on January 1, 2007. For example, some commenters noted that the revised form fails to ask for certain information such as the dates for agreements and arrangements. This is because the new regulation eliminates the requirement to report the specific date for agreements and arrangements on the confidential report form, except for future employment. Also received were a few comments that the form could not easily be completed electronically. This is because the version of the proposed modified form that was distributed to requesters during the paperwork notice process was not electronically fillable.

Many agencies have asked for a "smart form" rather than simply a form that can be filled out and saved electronically. A "smart form" allows the filer to answer a series of questions, after which a computer program enters the relevant data and generates the actual form. The expectation is that a "smart form" would eliminate many of the errors that filers often make when completing the form manually. We understand that such a form would be very useful. Unfortunately, as a small agency, OGE's budget constraints do not permit it to take on this larger project.

In the first round paperwork notice published on March 17, 2006, OGE indicated it intended to permit electronic filing of the new OGE Form 450. For this filing cycle, however, OGE has decided electronic filing using an Internet-based system will not be permitted. Further information about electronic filing will be forthcoming.

In response to the initial first round paperwork notice issued in August 2005, and at the autumn 2005 OGE conference, many commenters criticized the form's length. In response to these comments, the form's length has been significantly reduced. Although the proposed form contains seven pages, no agency will be required to retain the first page of the form (which contains the general instructions) or the last page of the form (which contains the examples), thus reducing the form to five pages. OGE noted, however, that in order to minimize the form's length certain concessions had to be made. For example, as one agency noted, it would be more effective to place the examples with the parts of the form that they illustrate, rather than on one page at the end of the form. But placing the examples on a separate page reduces the form's storage bulk by allowing agencies to separate and discard this page.

The proposed new OGE Form 450 also replaces the "none" boxes that appear in each part of the current OGE Form 450 with five "yes" or "no" boxes that all appear on the signature page. Like the "none" boxes, these "yes/no" boxes will indicate whether the filer has information to report in a particular part of the form. Although filers will still be required to check boxes to indicate whether they have information to report, these statements will be more visible to filers than the "none" boxes and will take up less space than in the previous proposal. Most significantly, placing all of the "yes/no" boxes on the signature page will allow agencies to retain only one page for each filer who checks the "no" box for all five parts, thereby vastly reducing the total number of pages that agencies will be required to store.

Analysis of Specific Comments

One agency commented that placing the signature lines on the form's first page may cause people to sign the form before they fill it out. We note, however, that the current version of the form also is organized in this manner. The filer provides his or her name, position, filing status, and grade, and then he or she signs the form. Parts I—V follow the signature. On the draft of the form that accompanied the first round paperwork notice published in August 2005, we placed all of the signatures at the end of the form. But many ethics officials expressed the concern that filers would forget to sign the form, or that the last page might become detached from the form and lost. As noted above, by putting the signature lines on the same page with the previously mentioned "yes/no" boxes, OGE was able to reduce the length of the proposed modified form in many cases to one page.

One agency requested that supervisors and intermediate reviewers not be required to fill in their e-mail addresses. Although OGE added a block for these individuals to provide their e-mail addresses, OGE is not requiring them to do so. We believe that providing a space on the form for supervisors to include contact information, if they choose to do so, will be helpful to most ethics offices.

One agency suggested that the penalty notice be placed adjacent to the filer's signature in the hope that employees will be more likely to notice it. Unfortunately, it will not fit there. As a compromise, the penalty notice has been moved to the center of page 1, its font size has been increased, it has been placed in bold print and a border is now surrounding it. These changes make it much more prominent than it was on prior versions of the form.

At the suggestion of two agencies, the "Date Received by Agency" box has been enlarged. At another agency's suggestion, the definition of special Government employee (SGE) has been moved so that it appears near the block requiring the filer to indicate his or her SGE status. A third agency recommended the elimination of the requirement that SGEs provide their home addresses, citing privacy concerns, and noting that it is not necessary to have an SGE's address now that the form asks for the filer's e-mail address. OGE agrees that it is not necessary for an SGE to provide a home address. However, OGE thinks it is useful to require an SGE to provide a mailing address at which the agency can contact him or her. Thus, "home address" has been changed to "mailing address" so that the SGE can decide which to provide.

As noted above, the first page of the proposed form includes five statements that take the place of the "none" boxes. One agency correctly noted that only annual filers must complete the gifts/travel reimbursements part of the form. Although in Part V of the form employees are instructed that only annual filers must complete this part of the form, it is agreed that this instruction also needs to be provided with these statements. Immediately above Statement V, the following language has been added: "Statement V is for annual filers only. It does not apply to new entrants and SGEs."

Three agencies recommended the addition of an instruction that the underlying holdings of variable annuities and investment life insurance must be reported in Part I. Space constraints originally precluded doing this, but this additional instruction has now been included. Three agencies also noted that the definition of "diversified mutual fund" that appeared on the proposed form was incorrect. This editing error has been corrected. The definition now reads as follows: "A mutual fund that does not have a stated policy of concentrating its investments in one industry, business, or single country other than the United States, or

bonds of a single State within the United States."

One agency recommended that the addition of the following to the instructions proposed for Part I: "Designate entries for your dependent children with '(DC)' and '(J)' for joint holdings." Because it was not the intention of OGE to signal any change in the use of these abbreviations, the instruction in Part I will now read: "You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held." In addition to changing the wording of this proposed instruction, it has been placed in the block labeled "Reportable Information" and removed from the instruction blocks for assets and income.

At the suggestion of one agency, line numbers have been added to the Part I continuation page. The suggestion of another agency that the "Bryggadune University" example that illustrates the receipt of earned income in Part I also be used as an example for Part III in order to help illustrate that any position with a former employer should also be listed in Part III has also been accepted.

One agency asked that the portions of the proposed modified form that filers have to complete be shaded, and instructions be provided to fill in the highlighted portions of the form. Although it was initially decided to accept this recommendation, when the highlighting suitable for viewing on a computer screen was made, the highlighting on the printed form was barely visible.

One agency requested that the ethics official, rather than the filer, be required to check the box for the filer's status because filers often mark the wrong box, and ethics officials must correct the error. It is understood that this error occurs, but OGE disagrees that the solution is to require the ethics official to complete this portion of the form. Requiring ethics officials to fill in this information on every form rather than correcting only those forms that have errors in this block would unnecessarily increase the administrative burden on ethics officials. Filers, not ethics officials, should be responsible for providing this information.

One agency asserted that two separate categories of instructions for assets and income are no longer needed because, under the current proposal, earned income, investment income, and assets would all be reported in Part I. OGE disagrees. The instructions for the reporting of assets and investment income are different from the instructions for reporting earned income. For example, a filer must report his or her assets, as well as the assets of the spouse and dependent children, but need not report the earned income of any dependent children. In addition, the reporting threshold for the earned income of the filer is different from the reporting threshold for the earned income of the filer's spouse. OGE believes that keeping the instructions in separate tables will help the filer notice these distinctions.

One agency recommended the addition of a column to Part I for the filer to list the type of asset or income (e.g., stock, bond, employer) which he or she reports. However, in response to comments received when ethics officials were surveyed in 2003, OGE intentionally eliminated the column that required filers to describe the type of income (dividends, rent, salary, capital gains) that they received from the assets listed in Part I. Just as it is unnecessary to require filers to report the type of investment income earned (e.g., "interest, dividends, capital gains"), it also is unnecessary to report the type of asset reported. OGE thinks that it is less time-consuming for the reviewer to contact the filer and ask about any particular entry that is not clearly identifiable on the form.

OGE also disagrees with one agency's suggestion that filers be required to provide the ticker symbols for their stocks and mutual funds. Although OGE recognizes that the inclusion of ticker symbols may be helpful to some reviewers, if the use of the ticker symbols were mandatory, ethics officials would then be required to obtain this information from filers who fail to provide it. OGE also has not accepted a similar recommendation that it allow filers to use the ticker symbol as an alternative to the full name of the reportable asset. Filers sometimes report the wrong ticker symbols and such mistakes make the conflict of interest analysis more difficult. OGE believes that it is best to continue to require that the filer report the full name of the company or fund, and make the use of ticker symbols optional.

On the proposed report that accompanied the first round paperwork notice published in August 2005, OGE had included a column for the filer to indicate whether a particular asset was worth over $15,000 or $50,000. Two agencies recommended that this column be reinstated. OGE had proposed this column so that filers could indicate which of their stocks and sector mutual funds are valued above these regulatory exemption amounts. On further reflection, however, OGE decided that the benefit of receiving this information would not justify the additional filing burden. The regulatory exemption amounts refer to the total value of the filer's financial interest in a particular matter, not just the value of a particular asset. In addition, security values fluctuate.

Two agencies asked that more blocks be added for the reporting of liabilities in Part II. OGE included only two lines in order to shorten the form. In addition, because the underlying confidential financial disclosure regulation amendments that will become effective on January 1, 2007 include a significant expansion of the exceptions for reporting liabilities, most filers will now have few, if any, liabilities to report.

One agency noted that the most common error that employees make in Part III on outside positions is to report, unnecessarily, their official duty activities. This agency recommended that OGE add official duty activities to the "Do Not Report" column in the instructions for Part III. The "Do Not Report" column in Part III already includes the instruction that a filer does not need to report "any position that you hold as part of your official duties."

Another agency recommended that, in Part III, OGE change the proposed column heading "organization" because it does not adequately convey to filers that they must report their outside activities and employment. Because the heading "organization" is used on the current version of the form, and we have received no indication that it has caused confusion, OGE has not accepted this recommendation.

One agency recommended the removal of the instruction in Part V that filers need not report bequests and other forms of inheritance that they receive. This agency's concern is that including this instruction may lead filers to believe that they also are not required to report their inherited assets in Part I. OGE does not believe it is necessary to change this instruction as proposed.

Two agencies suggested that the proposed example illustrating the requirement that a filer report his or her spouse's earned income on Part I should include the employer's city and State. We have not accepted this recommendation because this information is not required by the regulation either in its current version or as amended effective January 1, 2007. Although the city and State of the spouse's employer appear in the example on the current version of the form, neither the regulation nor the instructions on that form require that this information be reported.

Availability and Timing

After it is finally updated and authorized for use next year, OGE will make the modified OGE Form 450 available to departments and agencies, and their reporting employees, through the Forms, Publications & Other Ethics Documents section of OGE's Web site (*http://www.usoge.gov*). We will maintain the current version of the form on the OGE Web site for the remainder of 2006.

As noted above, OGE does not intend that the modified OGE Form 450 (once finalized) be utilized until 2007. OGE received from OMB an extension of paperwork clearance for the current version of the report form to allow its continued use for the remainder of 2006. Thus, agencies should continue to have their new entrant confidential report filers, including special Government employees filing such reports upon their reappointment/redesignation or appointment anniversary dates, use the current version of the form throughout 2006. After the forthcoming final clearance of the new modified version of the OGE Form 450, agencies should require both new entrant and annual incumbent confidential report filers to use the new version of the form starting in 2007.

Because of the introduction of the new form, filers will not be required to file their annual incumbent reports by October 31, 2006. Instead, OGE will require annual confidential filers to file the new modified form with their agencies by the new filing deadline of February 15, 2007. This first new report will incorporate a 15-month reporting period (from October 2005 through December 2006) in order to avoid any gap in reporting due to the transition from a fiscal year to a calendar year basis for annual reporting. Thereafter, the new annual confidential reports due each February will just cover the prior calendar year.

The electronically fillable form will be provided in Adobe Acrobat PDF format. It is specially encoded to allow the filer to save the completed form on his or her computer just by using the free Adobe Acrobat Reader software, available from Adobe via a link from the OGE Web site.

Effect on Use of Alternative Reports and OGE Optional Form 450–A

Since 1992, various departments and agencies have developed, with OGE review/approval, alternative reporting formats such as certificates of no conflict for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. In 1997, OGE itself developed the OGE Optional Form 450–A (Confidential Certificate of No New Interests (Executive Branch)) for possible agency and employee use in certain years, if applicable. That optional form continues in use at various agencies. However, the OGE Form 450 remains the uniform executive branch report form for most of those executive branch employees required by their agencies to report confidentially on their financial interests. Agencies may allow annual filers who meet the requirements to file the OGE Form 450–A rather than the new OGE Form 450 for this 15-month filing cycle.

Reporting Individuals

The OGE Form 450 is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed. Reporting individuals are regular employees whose positions have been designated by their agency under 5 CFR 2634.904 (both the current regulation as codified and the rule that will become effective in January 2007) as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities. Under that section, all special Government employees are also generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905 (§ 2634.904(b) of the rule that will become effective in January 2007). Reports normally are required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually if the employee serves for more than 60 days in the position.

Most of the persons who file this report are current executive branch Government employees at the time they complete their report. However, some filers are private citizens who are asked by their prospective agencies to file new entrant reports prior to entering Government service in order to permit advance identification of any potential conflicts of interest and resolution thereof by recusal, divestiture, waiver, etc.

Reporting Burden

In the two first round paperwork notices for the proposed modified form, the statistics OGE used to compute the reporting burden mistakenly included filers of the OGE Form 450–A and of alternative forms approved by OGE. Because the statistics should reflect the work involved in completing the OGE Form 450 and not any variations of the form, OGE is refining the statistics to reflect the reporting burden pertaining to the OGE Form 450 only. Additionally, the prior first round paperwork notices used statistics from calendar years 2002, 2003, and 2004. This paperwork notice uses the figures from calendar years 2003, 2004, and 2005.

Based on OGE's annual agency ethics program questionnaire responses for 2003 through 2005, OGE estimates that an average of approximately 246,131 OGE Form 450 reports will be filed each year for the next three years throughout the executive branch. This estimate is based on the number of OGE Form 450 reports filed branchwide for 2003 through 2005 (218,130 in 2003, 280,152 in 2004, and 240,111 in 2005) for a total of 738,393, with that number then divided by three and rounded, to give the projected annual average of 246,131 OGE Form 450 reports. Of these reports, OGE estimates that 7.65 percent, or some 18,829 per year, will be filed by private citizens with departments and agencies throughout the executive branch. Private citizen filers are those potential (incoming) regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities. No termination reports are required for the OGE Form 450.

Because the amount of information that must be reported on the proposed modified form has been reduced, each filing is now estimated to take an average of one hour to complete. This yields an annual reporting burden of 18,829 hours.

Consideration of Comments

In this second round notice, public comment is again invited, this time on the proposed further modified OGE Form 450 summarized in this notice and available without charge from OGE upon request (see the **FOR FURTHER INFORMATION CONTACT** section above). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), public comments are invited specifically on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

The Office of Government Ethics, in consultation with OMB, will consider

all comments received, which will become a matter of public record.

Approved: September 6, 2006.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E6–15129 Filed 9–12–06; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0641]

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

Descriptive Epidemiology of Missed or Delayed Diagnoses for Conditions Detected by Newborn Screening—(OMB No. 0920–0641)—Extension-National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Every State in the United States and Washington, DC, has a public health program to test newborn babies for congenital metabolic and other disorders through laboratory testing of dried blood spots. These programs screen for between 4 and 36 different conditions including phenylketonuria (PKU) and congenital hypothroidism, with testing performed in both state laboratories and private laboratories contracted by state health departments. The screening process or system is broader than the state public health newborn screening program, which is composed only of the laboratory and follow-up personnel. It involves the collection of blood from a newborn, analysis of the sample in a screening laboratory, follow-up of abnormal results, confirmatory testing and diagnostic work-up. Parents, hospitals, medical providers including primary care providers and specialists, state laboratory and follow-up personnel, advocates, as well as other partners such as local health departments, police, child protection workers, and courts play important roles in this process. Most children born with metabolic disease are identified in a timely manner and within the parameters defined by the newborn screening system of each State. These children are referred for diagnosis and treatment. However, some cases are not detected at all or the detection comes too late to prevent harm. These "missed cases" often result in severe morbidity such as mental retardation or death.

In this project, we will update and expand a previous epidemiological study of missed cases of two disorders published in 1986. We will assess the number of cases of each disorder missed, the reasons for the miss and legal outcomes, if any. The reasons for the miss will be tabulated according to which step or steps of the screening process it occurred. Data will be collected by asking state public health laboratory directors, newborn screening laboratory managers, follow-up coordinators, specialists at metabolic clinics and parent groups with an interest in newborn screening for information regarding missed cases. An estimated 100 subjects will be requested to complete a short questionnaire that asks for information regarding the details of any missed cases of which they are aware.

The survey will highlight procedures and actions taken by States and other participants in newborn screening systems to identify causes of missed cases and to modify policies and procedures to prevent or minimize recurrences. The information gleaned from this study may be used to help craft changes in the screening protocols that will make the process more organized and efficient and less likely to fail an affected child. Further, it is not clear that there is a systematic assessment of missed cases on a population basis; this project will seek to identify procedures for routine surveillance of missed cases. There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (hours)
State laboratory directors, screening laboratory managers, follow-up coordinators, metabolic clinic specialists, and parent groups	100	1	10/60	17

Dated: September 7, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–15151 Filed 9–12–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0128]

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

Congenital Syphilis (CS) Case Investigation and Report Form (CDC73.126)—OMB No. 0920–0128—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC proposes to continue data collection for congenital syphilis case investigations under the "Congenital Syphilis (CS) Case Investigation and Report Form" (CDC73.126, REV 11–98); this form is currently approved under OMB No. 0920–0128, and is due to expire on 9/30/2006. This request is for a 3-year extension of OMB approval.

Reducing congenital syphilis is a national objective in the DHHS Report entitled Healthy People 2010 (Vol. I and II). Objective 25–9 of this document states the goal: "Reduce congenital syphilis to 1 new case per 100,000 live births". In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued to monitor current levels of disease and progress towards the year 2010 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 500 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 130 hours per year. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Average number of responses per respondent	Average burden per response (in hours)	Total burden (hours)
Clerical and Hospital staff of state and local health department STD project areas	65	8	15/60	130
Total				130

Dated: September 6, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–15184 Filed 9–12–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the Shellfish and Seafood Safety Assistance Project; Announcement Type: Single Source Application; Agency Funding Opportunity Number: RFA–FDA–CFSAN–2006–1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), Office of Seafood is announcing its intent to award, noncompetitively, a cooperative agreement to the Interstate Shellfish Sanitation Conference (ISSC) in the amount of $320,500 for fiscal year 2006, for direct and indirect costs combined. Subject to the availability of Federal funds and successful performance, 4 additional years of support will be available. FDA will support the research covered by this notice under the authority of section 301 of the Public Health Service Act (the PHS act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This effort will enhance FDA's molluscan shellfish sanitation program and provide the public greater assurance of the quality and safety of these products.

II. Eligibility Information

Competition is limited to ISSC because ISSC is the only organization that has the established formal structure, procedures, and expertise to direct all components (public health, environmental, resource management, and enforcement) of an effective shellfish sanitation program.

ISSC is a partnership of State shellfish control officials representing both environmental and public health agencies; Federal agencies including FDA, the Environmental Protection Agency, and the National Marine Fisheries Service of the Department of Commerce; and representatives from industry, academia, and foreign governments. ISSC will continue to improve information exchange and transfer among States, Federal agencies, industry, and consumers. ISSC will strengthen State activities by providing them with procedural and policy guidance, technical training, research, and consumer education, and ISSC will enhance research efforts and projects which will contribute significantly to the ISSC/FDA ability to identify scientifically defensible controls which reduce the incidence of *Vibrio vulnificus* and *Vibrio parahaemolyticus* illness.

III. Application and Submission

For further information or a copy of the complete Request for Application (RFA), contact Gladys M. Bohler, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7168, e-mail: *gladys.melendez-bohler@fda.hhs.gov.*

This RFA can be viewed on Grants.gov (*http://www.grants.gov*) under "Find Grant Opportunities." (FDA has verified the Web site and its address but we are not responsible for subsequent changes to the Web site or its address after this document publishes in the **Federal Register**.) A copy of the complete RFA can be viewed also on CFSAN's Web site at *http://www.cfsan.fda.gov/list.html.*

For issues regarding the programmatic and scientific aspects of this notice, contact Paul Distefano, Center for Food Safety and Applied Nutrition (HFS–417), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1410, e-mail: *paul.distefano@fda.hhs.gov.*

Dated: September 7, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–15102 Filed 9–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–63]

Notice of Submission of Proposed Information Collection to OMB; Neighborhood Networks Management and Tracking Data Collection Instruments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Neighborhood Networks Centers submit business plans, operating procedures, and demographic data to HUD. HUD uses the information to assist center directors in the development and operation of the centers and to track and evaluate the development and implementation of center programs.

DATES: *Comments Due Date:* October 13, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0553) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Neighborhood Networks Management and Tracking Data Collection Instruments.

OMB Approval Number: 2502–0553.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The Neighborhood Networks Centers submit business plans, operating procedures, and demographic data to HUD. HUD uses the information to assist center directors in the development and operation of the centers and to track and evaluate the development and implementation of center programs.

Frequency of Submission: On Occasion, Quarterly and Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	1,200	3,754		0.77		2,905

Total Estimated Burden Hours: 2,905.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2006.

Lillian L. Deitzer,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–15104 Filed 9–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Long Island National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of the final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact for Long Island National Wildlife Refuge (NWR) Complex. Prepared in conformance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, the plan describes how we intend to manage the complex over the next 15 years.

ADDRESSES: You may obtain copies of this CCP on compact disk or in print by writing to Long Island National Wildlife Refuge Complex, P.O. Box 21, 360 Smith Road, Shirley, NY 11967, or by calling 631–286–0485. You may also access and download a copy from the Web sites *http://library.fws.gov/ccps.htm* or *http://longislandrefuges.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Deb Long, Refuge Manager, Long Island NWR Complex, at 631–286–0485, or by e-mail at *Deb_Long@fws.gov.*

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668 dd *et seq.*) requires CCPs for all refuges to provide refuge managers with 15-year strategies for achieving refuge purposes and furthering the mission of the National Wildlife Refuge System. Developing CCPs is done according to the sound principles of fish and wildlife science and laws, while adhering to Service planning and related policies. In addition to outlining broad management direction on conserving refuge wildlife and habitat, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update this CCP at least once every 15 years.

Long Island NWR Complex includes Amagansett, Conscience Point, Elizabeth A. Morton, Oyster Bay, Seatuck, Target Rock, and Wertheim NWRs, along with Lido Beach Wildlife Management Area and the Sayville Unit. The complex spans over 6,200 acres in Suffolk and Nassau Counties of New York State. Management focuses on migratory birds, threatened and endangered species, and their habitats. The Service acquired most of the refuges in the complex under authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715–715r) for "use as an inviolate sanctuary, or for any other management purposes, for migratory birds." Three of the units were established under authority of the Transfer of Certain Real Property for Wildlife Conservation Purposes Act (16 U.S.C. 667b–667d) for "particular value in carrying out the national migratory bird management program."

We distributed a draft CCP/EA for public review and comment for 30 days between June 19 and July 19, 2006. Its distribution was announced in the **Federal Register** on June 19, 2006 (71 FR 35283). That draft analyzed three alternatives for managing the complex. We also held three public meetings, on June 26, 27, and 28, 2006, to obtain public comments. We received 29 comments. Appendix I of the final CCP includes a summary of those comments and our responses to them.

We selected Alternative B (the Service-proposed action) from the draft CCP/EA as the alternative for implementation. Our final CCP fully describes its details. Staff from Wertheim NWR headquarters office in Shirley, New York, will continue to administer all units of the complex. Highlights of the final CCP include:

(1) Increasing existing programs to protect habitats and manage for the threatened piping plover, the endangered Sandplain gerardia, American eel, mud and box turtles, wintering waterfowl, and neotropical migratory songbirds;

(2) Intensifying efforts to control non-native invasive species such as phragmites, and evaluating and implementing new management practices to decrease insecticide use in marsh communities;

(3) Constructing a new headquarters and visitor facility at Wertheim NWR that will also serve as an office for Region 5's Long Island Field Office, part of the Ecological Services program;

(4) Strengthening interpretive and environmental education programs throughout the refuges; and

(5) Expanding outreach efforts, such as public relations and volunteer programs;

(6) Initiating a regulated early-season (September) hunt and other population control measures to manage overabundant populations of resident Canada geese at Wertheim NWR.

The Service will actively pursue land acquisition opportunities within the refuges' approved boundaries, as well as other land protection opportunities. However, the CCP does not propose Service acquisition of additional lands at this time.

Dated: August 30, 2006.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E6–15150 Filed 9–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–24 1A; OMB Control Number 1004–0029]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) will send a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 21, 2005, the BLM published a notice in the **Federal Register** (70 FR 20765) requesting comment on this information collection. The comment period ended on June 20, 2005. The BLM did not receive any comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration you comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior

Department Desk Officer (1004–0029), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Attention: Bureau of Information Collection Clearance Officer (WO–630), Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Color-of-Title: Conveyances Affecting Color or Claim of Title (43 CFR part 2540).

OMB Control Number: 1004–0029.

Bureau Form Number: 2540–1, 2540–2, and 2540–3.

Abstract: The BLM collects and uses the information to determine if an applicant meets the statutory requirements of the Color-of-Title Act and regulations 43 CFR part 2540.

Frequency: One.

Description of Respondents: Individuals, groups, or corporations.

Estimated Completion Time: 3 hours.

Annual Responses: 7.

Average Application Processing Fee Per Response: $10.

Annual Burden Hours: 21.

Bureau Clearance Officer: Ted Hudson, (202) 452–5033.

Dated: September 7, 2006.

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–7608 Filed 9–12–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–FA–24 1A; OMB Control Number 1004–0114]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) will send a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). On April 21, 2005, the BLM published a notice in the **Federal Register** (70 FR 20768) requesting comment on this information collection. The comment period ended on June 20, 2005. The BLM did not receive any comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0114), at ONB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Attention: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

Nature of Comments We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites; Payment of Location and Maintenance Fees and Service Charges. (43 CFR Parts 3730, 3810, 3820, 2830–3839).

OMB Control Number: 1004–0114.

Bureau Form Number: 3830–2 and 3830–3.

Abstract: The Bureau of Land Management (BLM) collects and uses the information to determine whether or not mining, claimants have met statutory requirements. Mining claimants must record location notices or certificates of mining claims, mill sites, and tunnel sites with BLM within 90 days of their location. Claimants who do not pay the maintenance fee must make an annual filing by December 30. The mining claim or site is forfeited by operation of law if claimants fail to record the mining claim or site or to submit an annual filing when required.

Frequency: Once for notices and certificates of location, notice of intent to locate mining claims, and payment of location fees. Once for annual filings, payment of maintenance fees, or filing of waivers, and as needed for recording of amendments to a previously recorded notice or certificate of location or transfer of interest.

Description of Respondents: Individuals, groups, or corporations.

Estimated Completion Time: Form 3830–2 is 20 minutes/Form 3830–3 is 25 minutes.

Annual Responses: 220,281.

Average Application Processing Fee Per Response: We charge $15 each for new claims, $10 each for all other mining claims documents, and $25/$90 for each notice of intent to locate mining claims and petitions for deferment of assessment work.

Annual Burden Hours: 19,349.

Bureau Clearance Officer: Ted Hudson, (202) 452–5033.

Dated: September 7, 2006.

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–7609 Filed 9–12–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14942–A]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for

conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to MTNT, Ltd., Successor in Interest to Gold Creek Limited. The lands are in the vicinity of Takotna, Alaska, and are located in:

U.S. Survey No. 10543, Alaska.

Containing 4.66 acres.

Seward Meridian, Alaska

T. 33 N., R. 36 W.,
Secs. 1 and 11.
Containing 747.26 acres.
T. 33 N., R. 37 W.,
Sec. 6.
Containing 629.60 acres.
T. 32 N., R. 38 W.,
Secs. 26 and 35.
Containing 1,225.23 acres.
T. 33 N., R. 38 W.,
Secs. 11, 13, and 14.
Containing 1,874.79 acres.
Aggregating 4,481.54 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to MTNT, Ltd., Successor in Interest to Gold Creek Limited. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 13, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–15107 Filed 9–12–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14956–B, F–14956–C, F–14956–D, F–14956–A2, and F–14956–B2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands owned by the United States for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to White Mountain Native Corporation. The lands are in the vicinity of White Mountain, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 7 S., R. 22 W.,
Tract C;
Secs. 4 and 5;
Secs. 20 and 29.
Containing 4,423.04 acres.
T. 8 S., R. 24 W.,
Tracts B and C;
Secs. 17 and 18;
Secs. 20, 29, and 32.
Containing 3,182.66 acres.
T. 9 S., R. 25 W.,
Sec. 1.
Containing 604.48 acres.
T. 10 S., R. 25 W.,
Secs. 7 and 9;
Secs. 16, 18, and 21.
Containing 3,135.40 acres.
T. 9 S., R. 26 W.,
Secs. 23 to 29, inclusive;
Secs. 33, 34, and 35.
Containing 6,400 acres.
T. 10 S., R. 26 W.,
Secs. 1, 2, and 3.
Containing 1,920 acres.
Aggregating 19,665.58 acres.

The subsurface/surface estate in these lands will be conveyed to Bering Straits Native Corporation when the non-mineral estate is conveyed to White Mountain Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 13, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–15108 Filed 9–12–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0043]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Training and Technical Assistance Semi-Annual Status Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies. This revised information collection was previously published in the **Federal Register** Volume 71, Number 127, page 37945 on July 3, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 13, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services,

1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Training and Technical Assistance Semi-Annual Status Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Regional Community Policing Institutes will report to the COPS Office on the status of award activities on a semi-annual basis. Secondary: COPS awardees such as universities and non-profit agencies will report to the COPS Office on the status of award activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 41 respondents will complete the form within two hours semi-annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 164 total annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: September 7, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–15209 Filed 9–12–06; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "the Committee").

DATES: The meeting will take place on October 3, 2006, from 8:30 a.m. to 5 p.m. and on October 4, 2006, from 8:30 am to 12 noon.

ADDRESSES: The meeting will take place at the Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC 20036. Signs will be posted in the lobby of the hotel to direct attendees to the meeting location.

FOR FURTHER INFORMATION CONTACT: Sandy Lonick, The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530; by telephone at: (202) 307–6026; e-mail: *Saundra.Lonick@usdoj.gov;* or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.usdoj.gov/ovw/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related laws. The Committee also assists in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking. Because violence against women is increasingly recognized as a public health problem of staggering human cost, the Committee brings national attention to the problem to increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work and the Federal Government's response to violence against women; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related laws.

Schedule: This meeting will be held on October 3, 2006, from 8:30 a.m. until 5 p.m. and on October 4, 2006 from 8:30 am until 12 noon, and will include breaks and a working lunch. Time will be reserved for public comment on October 4 beginning at 9:00 am and ending at 9:30 am. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space-available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Sandy Lonick by e-mail at: *Saundra.Lonick@usdoj.gov;* or fax: (202) 307–3911. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodations in order to attend the meeting should notify Sandy Lonick by e-mail at: *Saundra.Lonick@usdoj.gov;* or fax at: (202) 307–3911, no later than September 25, 2006. After this date, we will attempt to satisfy accommodation requests, but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by September 25, 2006 to Sandy Lonick at The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530. Comments may also be submitted by e-mail at *Saundra.Lonick@usdoj.gov;* or fax at (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will discuss the implementation of the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related legislation, are

requested to reserve time on the agenda by contacting Sandy Lonick by e-mail at *Saundra.Lonick@usdoj.gov;* or fax at (202) 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the issue. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at 800 K Street, NW., Ste. 920, Washington, DC 20530.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. E6–15208 Filed 9–12–06; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response Compensation, and Liability Act

Notice is hereby given that on September 5, 2006, a proposed Consent Decree ("Decree") in *United States* v. *United Park City Mines Co, et al.,* Civil Action No. 2:06CV00745 PCG, was lodged with the United States District Court for the District of Utah.

The Decree resolves the United States' claims against United Park City Mines Company ("UPCM") and the Atlantic Richfield Company ("ARCO") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, for past response costs incurred at the Richardson Flat Tailings Site outside Park City, Utah. The Decree requires UPCM and ARCO to pay the United States $400,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *United Park City Mines Co., et al.,* D.J. Ref. 90–11–3–08764.

The Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at U.S. EPA Region 8, 999 Eighteenth Street, Suite 300, Denver, Colorado 80202. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 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 $4.50 payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7617 Filed 9–2–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response Compensation, and Liability Act

Notice is hereby given that on September 5, 2006, a proposed Partial Consent Decree ("Decree") in *United States* v. *United Park City Mines Co., et al.,* Civil Action No. 2:06CV00745 PCG, was lodged with the United States District Court for the District of Utah.

The Decree resolves the United States' claims against Falconbridge Limited ("Falconbridge") and Noranda Mining Inc. ("Noranda") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, for past response costs incurred at the Richardson Flat Tailings Site outside Park City, Utah. The Decree requires Falconbridge and Noranda to pay the United States $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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, D.C. 20044–7611, and should refer to *United States* v. *United Park City Mines Co., et al.,* D.J. Ref. 90–11–3–08764.

The Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at U.S. EPA Region 8,999 Eighteenth Street, Suite 300, Denver, Colorado 80202. During the public comment period, the Decree may also be examined on the following Department of Justice Web site. *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 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 $4.25 payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7618 Filed 9–12–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,936]

C-Tech Industries Inc., Calumet, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 22. 2006, in response to a petition filed by a company official on behalf of workers at C-Tech Industries Inc., Calumet, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 1st day of September, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15080 Filed 9–12–06; 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 and Alternative Trade 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 period of August 21 through August 25, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, 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 country 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 for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, 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.

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.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker 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 Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–59,703; Demers Leather Sales, Lewiston, ME: July 11, 2005.

TA–W–59,891; Ner Data Products, Inc., Denver, CO: August 11, 2005.

TA–W–59,648; Adecco Staffing, Working On-Site at Sheaffer Mfg., Ft. Madison, IA: June 27, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

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 Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,753; Noveon Corporation, Division of Lubrizol, Linden, NJ: July 19, 2005.

TA–W–59,767; Cooper Standard Automotive, NVH Division, El Dorado, AR: August 24, 2006.

TA–W–59,795; Handy and Harman Tube Company, Norristown, PA: July 26, 2005.

TA–W–59,805; Stone Transport, Working On-Site at General Motors, Lansing Metal Center, Lansing, MI: July 19, 2005.

TA–W–59,806; Securitas Security Services USA, Automotive Division Services, Lansing, MI: July 19, 2005.

TA–W–59,808; Quaker Chemical Corp., Working On-Site at General Motors, Lansing Metal Center, Lansing, MI: July 19, 2005.

TA–W–59,809; HSS, LLC, Working On-Site At General Motors, Lansing Metal Center, Lansing, MI: July 19, 2005.

TA–W–59,811; Comprehensive Logistics, Working On-Site At General Motors Lansing Metal Center, Lansing, MI: July 19, 2005.

TA–W–59,814; Aerotek, A Subsidiary of Allegis Group, Lansing, MI: July 19, 2005.

TA–W–59,834; Hamrick's, Inc., Plant 8, Asheboro, NC: August 1, 2005.

TA–W–59,895; Affinia Brake Parts, Inc., Formerly Known as Dana Brake Parts, Division of Affinia, Inc., Litchfield, IL: August 11, 2005.

TA–W–59,905; Shelby Group Manufacturing, Inc., Shelby Specialty Glove Div., Glenwood, AR: August 14, 2005.

TA–W–59,568; East Palestine China Co., East Palestine, OH: June 13, 2005.

TA–W–59,666; Berkline Benchcraft, LLC, Baldwyn Facility Plant 7, Baldwyn, MS: July 3, 2005.

TA–W–59,715; Salisbury Manufacturing Corp., Salisbury, NC: June 28, 2005.

TA–W–59,774; Cranston Print Works Co., Webster, MA: July 20, 2005.

TA–W–59,802; New Haven Copper Co., Olin Corporation, Seymour, CT: July 26, 2005.

TA–W–59,801; Shirts by Astro, LLC, Doyle, TN: July 21, 2005.

TA–W–59,879; Fashion Avenue Knits, Inc., New York, NY: August 9, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,658; Sanmina-SCI Corp., Personal Computer Mfg. Division, Plant 1474, Durham, NC: February 11, 2006.

TA–W–59,658A; Sanmina-SCI Corp., Personal Computer Mfg. Division, Plant 1475, Durham, NC: February 11, 2006.

TA–W–59,670; Preformed Line Products, Inc., Rogers, AR: July 5, 2005.

TA–W–59,708; Capital Mercury Apparel, Ltd., Mar Bax Shirt Company, Gassville, AR: August 23, 2006.

TA–W–59,786; United Plastics Group, Inc., Leased Workers of Select Temporary Services, Anaheim, CA: July 13, 2005.

TA–W–59,869; Molson Coors Brewing Company, Memphis Division, Memphis, TN: August 8, 2005.

TA–W–59,890; Markar Architectural Products, Inc., A Subsidiary of Adams Rite Mfg. Co., Lancaster, NY: August 10, 2005.

TA–W–59,694; Telect, Inc., Liberty Lake, WA: August 1, 2006.

TA–W–59,793; Jarvis Pemco, Kalamazoo, MI: July 25, 2005.

TA–W–59,804; Carroll Industries, Inc., Boone, NC: July 27, 2005.

TA–W–59,902; Electronic Data Systems Corp., Leased Workers On-Site at Affinia Brake Parts, McHenry, IL: August 11, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,873; JC TEC Industries, Inc., Annville, KY: August 7, 2005.

TA–W–59,900; Eaton Corporation, Torque Control Products Division, Marshall, MI: August 14, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–59,648; Adecco Staffing, Working On-Site at Sheaffer Mfg., Ft. Madison, IA.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,703; Demers Leather Sales, Lewiston, ME.

TA–W–59,891; Ner Data Products, Inc., Denver, CO.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–59,725; Agilent Technologies, Little Falls Site, Wilmington, DE.

TA–W–59,807; RSDC of Michigan, LLC, Holt, MI.

TA–W–59,810; EDS, Lansing, MI.

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–59,789; Allied Air Enterprises, A Subsidiary of Lennox International, Bellevue, OH.

TA–W–59,830; Phoenix Salmon U.S. Inc., A Division of Horton's of Maine, Inc., Eastport, ME.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,242; Brown City Casting, dba Yale Industries, Yale, MI.

TA–W–59,527; MAG, Inc., El Paso, TX.

TA–W–59,623; Hexcel Corporation, Composites Division, Livermore, CA.

TA–W–59,702; Automatic Products International, LTD, St. Paul, MN.

TA–W–59,782; Metal Powder Products Co., Ford Road Division, St. Mary's, PA.

TA–W–59,794; Dacco, Inc., A Division of Jordan Industries, Inc., Huntland, TN.

TA–W–59,825; High Country Forest Products, A Division of C and R Milling, Wellington, UT.

TA–W–59,835; Heritage American Homes, Division of Patriot Homes, Sikeston, MO.

TA–W–59,847; Label World, Inc., Rochester, NY.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

TA–W–59,696; Metrobility Optical Systems, Div. of Telco Systems Inc., Merrimack, NH.

TA–W–59,756; Volex, Inc., Power Cord Products Division, Clinton, AR.

TA–W–59,817; Synthron, Inc., Morganton, NC.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,667; Acro Service Corporation, Livonia, MI.

TA–W–59,693; Bowne of Cleveland, Inc., Cleveland, OH.
TA–W–59,705; Computer Sciences Corp., Global Transformation Group, Los Angeles, CA.
TA–W–59,705A; Computer Sciences Corp., Global Transformation Group, Simi Valley, CA.
TA–W–59,720; MacDermid, Inc., Waterbury, CT.
TA–W–59,791; General Motors Corp., Service Parts Operation, Beaverton, OR.
TA–W–59,812; Canteen Services, Inc., Working On-Site at General Motors Lansing Metal Center, Belmont, MI.
TA–W–59,813; Bartech Technical Services, LLC, Working On-Site at General Motors Lansing Metal Center, Lansing, MI.
TA–W–59,858; Cardsmart, A Division of Paramount Cards Holding Co., Pawtucket, RI.
TA–W–59,871; Agilent Technologies, Global Infrastructure Organization, Andover, MA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the month of August 21 through August 25, 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: September 5, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–15081 Filed 9–12–06; 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 and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 25, 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 September 25, 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 7th day of September 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 8/28/06 AND 9/1/06

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59960	Fibre Metal Products Co. (Comp)	Concordville, PA	08/28/06	08/17/06
59961	Agilent Technologies (State)	Santa Rosa, CA	08/28/06	08/25/06
59962	Elbeco City Shirt Company (Union)	Frackville, PA	08/28/06	08/25/06
59963	COBE Cardiovascular, Inc. (Comp)	Arvada, CO	08/28/06	08/23/06
59964	Gerald Smith Hosiery (Comp)	Fort Payne, AL	08/28/06	08/25/06
59965	Jones Apparel of Texas II, Ltd. (Comp)	El Paso, TX	08/28/06	08/21/06
59966	ABB, Inc. (Union)	Lewisburg, WV	08/28/06	08/28/06
59967	GAC Chemical Corp. (Wkrs)	Searsport, ME	08/28/06	08/16/06
59968	Teamlinden (Comp)	Linden, TN	08/29/06	08/03/06
59969	Burke E. Parker Machinery Co., USA (Comp)	Grand Rapids, MI	08/29/06	08/22/06
59970	TDE Group, Inc. (Wkrs)	Somerset, KY	08/29/06	08/28/06
59971	Mar/Tron, Inc. (State)	Flippin, AR	08/29/06	08/28/06
59972	National Apparel (Wkrs)	San Francisco, CA	08/29/06	08/28/06
59973	Camel Manufacturing (State)	Pioneer, TN	08/29/06	08/28/06
59974	Delphi (Wkrs)	New Brunswick, NJ	08/29/06	08/29/06
59975	Timberland—The OIUtdoor Footwear Company (State)	Isabela, PR	08/29/06	08/29/06
59976	Briggs and Stratton Corp. (State)	Rolla, MO	08/29/06	08/28/06
59977	Central Penn Sewing Machine Co., Inc. (Comp)	Bloomsburg, PA	08/29/06	08/29/06
59978	Umicore Cobalt Products (Comp)	Maxton, NC	08/29/06	08/28/06
59979	Vital Performance, LLC (Wkrs)	Beaverton, OR	08/30/06	08/29/06
59980	M and J Industries, LLC (Comp)	Lucasville, OH	08/30/06	08/18/06
59981	Moeller Electric Corp. (State)	Lincoln Park, NJ	08/30/06	08/29/06
59982	Bridgestone/Firestone North American Tire, LLC (USW)	Oklahoma City, OK	08/30/06	08/29/06
59983	Ruggiero Seafood, Inc. (Wkrs)	Newark, NJ	08/30/06	08/24/06
59984	Schmald Tool and Die, Inc. (Comp)	Burton, MI	08/30/06	08/29/06
59985	River City Trucking (COMP)	Old Town, ME	08/31/06	08/28/06
59986	Crane Valve North America (COMP)	Washington, IA	08/31/06	08/30/06
59987	Nypro Inc. (COMP)	Hazard, KY	08/31/06	08/30/06
59988	Smith Die & Mold, Inc. (COMP)	Port Huron, MI	08/31/06	08/29/06

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 8/28/06 AND 9/1/06—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59989	Canam Metal Products, Inc. (State)	Colton, CA	09/01/06	08/30/06
59990	Honeywell International, Inc. (State)	Syosset, NY	09/01/06	08/30/06
59991	Sparta Manufacturing (Comp)	Sparta, WI	09/01/06	08/29/06
59992	Aimsworth Engineered (State)	Bemidji, MN	09/01/06	08/31/06
59993	Fenton Gift Shops, Inc. (Comp)	Williamstown, WV	09/01/06	08/31/06
59994	Ortech (Wkrs)	Kirksville, MO	09/01/06	08/30/06
59995	Bess Manufacturing Co. (Wkrs)	Bensalem, PA	09/01/06	08/24/06
59996	Federal Mogul Products, Inc. (Wkrs)	St. Louis, MO	09/01/06	08/26/06
59997	Whirlpool Corporation (Wkrs)	Lavergne, TN	09/01/06	08/18/06
59998	Mortgage Guaranty Insurance Corp. (Wkrs)	Milwaukee, WI	09/01/06	08/24/06
59999	Paxar Americas, Inc. (Wkrs)	Huger Heights, OH	09/01/06	08/31/06
60000	Dyer Specialty Co., Inc. (Comp)	Lake Havasu City, AZ	09/01/06	08/15/06

[FR Doc. E6–15106 Filed 9–12–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,889]

Kirin Cutting Service, Inc., San Francisco, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2006 in response to a petition filed on behalf of workers of Kirin Cutting Service, Inc., San Francisco, California.

The petition has been deemed invalid. Two of the three petitioners were separated from employment more than one-year prior to the date of the petition (August 11, 2006). Consequently, the investigation has been terminated.

Signed at Washington, DC, this 31st day of August 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15078 Filed 9–12–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,924]

Mountain Surf, Inc., Friendsville, MD; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2006 in response to a petition filed by a company official on behalf of workers at Mountain Surf Inc., Friendsville, Maryland.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 6th day of September, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15079 Filed 9–12–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,987]

Nypro-Kentucky, Hazard Division, Hazard, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 31, 2006, in response to a petition filed by a company official on behalf of workers at Nypro-Kentucky, Hazard Division, Hazard, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 7th day of September, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15110 Filed 9–12–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,985A and TA–W–56,985C]

Oneida Ltd., Sales Office, Oneida, NY, Including an Employee of Oneida Ltd., Sales Office, Oneida, NY, Located in Lawrenceville, GA; 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 May 27, 2005, applicable to workers of Oneida Ltd., Sales Office, Oneida, New York. The notice was published in the **Federal Register** on June 28, 2005 (70 FR 37117).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm.

New information shows that a worker was separated involving an employee of the Sales Office, Oneida, New York facility of Oneida Ltd. located in Lawrenceville, Georgia. Ms. Rebecca Carlson, Regional Service Manager, provided support services for the production of stainless steel, silver plated and sterling silver flatware at the Sherrill, New York facility of Oneida Ltd.

Accordingly, the Department is amending this certification to include an employee of the Sales Office, Oneida, New York facility of Oneida Ltd., located in Lawrenceville, Georgia.

The intent of the Department's certification is to include all workers employed at Oneida Ltd., Sales Office,

Oneida, New York who were adversely affected by increased company imports.

The amended notice applicable to TA–W–56,985 is hereby issued as follows:

"All workers of Oneida Ltd., Main Plant, Sherrill, New York (TA–W–56,985), Oneida Ltd., Sales Office, Oneida, New York (TA–W–56,985A), including an employee of Oneida Ltd., Sales Office, Oneida, New York located in Lawrenceville, Georgia (TA–W–56,985C) who became totally or partially separated from employment on or after April 1, 2005, through May 27, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974." And

"All workers of Oneida Ltd., Main Plant, Sherrill, New York (TA–W–56,985), Oneida Ltd., Sales Office, Oneida, New York (TA–W–56,985A), Oneida Ltd., Distribution Facility, Sherrill, New York (TA–W–56,985B) and including an employee of Oneida Ltd., Sales Office, Oneida, New York located in Lawrenceville, Georgia (TA–W–56,985C) who became totally or partially separated from employment on or after April 6, 2004, through May 27, 2007, are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 24th day of August 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15077 Filed 9–12–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

U.S. Chief Financial Officer Council; Grants Policy Committee Meeting

ACTION: Notice of open stakeholder meeting and Webcast.

SUMMARY: This notice announces the first of a series of open Webcast stakeholder meetings sponsored by the Grants Policy Committee of the U.S. Chief Financial Officer Council.

DATES: The Committee will hold an open stakeholder meeting and Webcast on Wednesday, October 25, 2006, 11 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held in Room B–180 of the U.S. Department of Housing and Urban Development at 451 7th Street SW., Washington, DC 20410. Seating is limited—the first 80 people to respond can be part of the live audience. To reserve your seat, contact Charisse Carey-Nunes National Science Foundation. Telephone: (703) 292–5056. E-mail: *ccarney@nsf.gov*. All who have reserved seating, must arrive at the HUD building fifteen minutes prior to broadcast, arrive on the North side of the building, you must have photo ID to gain access and will have to go to the security screening.

Organizations are encouraged to send only one representative in person to the meeting in order to allow room for maximum representation of diverse groups. The Committee encourages organizations to invite their staffs and members to participate via Webcast.

This will be a live Webcast, allowing interaction and involvement by a substantial number of participants.

FOR FURTHER INFORMATION CONTACT: Charisse Carney-Nunes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–5056. E-mail: *ccarney@nsf.gov*. Information about this meeting and Webcast will be posted on the Web site of the Grants Streamlining Initiative at *http://www.grants.gov/aboutgrants/streamlining_initiatives.jsp*. Please note that a sign-language interpreter for the hearing-impaired will be provided.

Comments Submission Information: You may submit comments during the Webcast via phone or e-mail: phone 202–708–0095 and e-mail *HUDTV@hud.gov*.

After the Webcast, a link to its recording will be posted on the Web site of the Grants Streamlining Initiative at *http://www.grants.gov/aboutgrants/streamlining_initiatives.jsp* for at least two additional weeks. Comments on issues pertaining to the meeting will be reviewed on an ongoing basis up until November 8, 2006—two weeks after the conclusion of the meeting. Please submit all post-meeting comments to: *PL106107@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to update and inform the broad community of Public Law (Pub. L.) 106–107 stakeholders about the Grant Policy Committee's (GPC's) past and ongoing activities related to the Federal Grants Streamlining Initiative (FGSI). Additionally, the meeting will serve as an opportunity to receive feedback and clarify any issues of concern to interested stakeholders. Finally, the meeting will assist the Committee as it undertakes planning and agenda setting for future Pub. L. 106–107 stakeholder meetings. The Committee seeks stakeholder input as it frames these upcoming meetings to assist the Committee in attaining its objective to ensure that the government's initiative streamlines and simplifies the grants and cooperative agreements administrative process, while maintaining the highest level customer service satisfaction, efficiency, effectiveness and accountability of the Federal process in a manner cognizant of currently available resources.

Meeting structure and agenda: The October 25th Webcast meeting will have the following structure and agenda:

(1) Welcome by the host agency;

(2) Overview of the Grants Policy Committee by the Committee co-chair;

(3) Updates and status reports from work group chairs: pre-award work group; post-award group; and audit oversight work group; and

(4) Community input, discussion, questions and comments. The meeting organizers have reserved 60–75 minutes for the community input section. Please note that this agenda and any amendments will be posted on the Web site of the Grants Streamlining Initiative at *http://www.grants.gov/aboutgrants/streamlining_initiatives.jsp*.

Background: Federal programs providing financial assistance comprise a large and diverse enterprise with widely varying purposes and recipient communities. Twenty-six Federal grant making agencies administer approximately $526 billion in grant funds through over 900 programs. The programs stimulate or support a wide variety of public purposes in areas such as health, social services, law enforcement, agriculture, housing, community and regional development, education and training, and research.

The main goal of grants management is to ensure that Federal dollars are effectively spent in accordance with their intended purpose. To achieve this there must be accountability at the Federal level, the grantee level, and even at the sub-grantee level where applicable. A second, sometimes conflicting, goal is to avoid excessive or cumbersome regulation of individual grantees and minimize administrative burden throughout the process.

Public Law 106–107 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also requires executive agencies to develop, submit to the Congress, and implement a plan for that streamlining and simplification.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which

the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was a need to streamline and simplify Federal grant reporting requirements and procedures and associated business processes to reduce unnecessary burdens on recipients and to improve the timeliness, completeness and quality of the information collected.

Through the leadership of the GPC of the U.S. Chief Financial Officer Council, the FGSI was developed to implement the provisions of the Federal Financial Assistance Improvement Management Act of 1999 Public Law 106–107 and to further the Expanded Electronic Government initiative set forth in the President's Management Agenda as it pertains to simplifying grants management. The FGSI is a coordinated, multi-year grant simplification and streamlining program that will improve the management of Federal financial assistance awards by:

- Improving the framework of grant policy;
- Simplifying Federal programs' administrative requirements;
- Exploring electronic processing options;
- Streamlining the delivery of payments; and
- Furthering audit and oversight policy.

With the leadership of the GPC, all Federal grant-making agencies are participating in the FGSI.

Important Information for Webcast Participation

This Webcast will be hosted by and broadcast from the U.S. Department of Housing and Urban Development, located at 451 7th Street, SW., Washington, DC Room B–180. Satellite coordinates for viewing the Webcast can be found on HUD's Web site: *http://www.hud.gov/webcasts/satcoord.cfm.*

The call-in number and e-mail address available for participants during this Webcast to ask questions/make comments are as follows: phone 202–708–0095 and e-mail *HUDTV@hud.gov.* This information may only be used DURING the live Webcast. Participants wishing to comment after the meeting must submit their comments to *PL106107@hhs.gov.*

If you would like to test your computer to make sure you can use the HUD Webcasting software on it, go to *http://www.hud.gov/webcasts/index.cfm.*

Dated: September 8, 2006.

Thomas N. Cooley,

Chair, Grants Policy Committee of the U.S. Chief Financial Officer Council.

[FR Doc. 06–7614 Filed 9–12–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–07354]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. SUB–834, To Authorize Disposal, in Accordance With 10 CFR 20.2002, of Contaminated Military Vehicles by the Department of the Army, U.S. Army Aberdeen Test Center Facility, Aberdeen Proving Ground, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SUB–834. This license is held by the Department of the Army Aberdeen Test Center (the Licensee), for its facility located at the Aberdeen Proving Ground, Maryland. License No. SUB–834 was issued to the Army on April 11, 1961, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorizes the Licensee to use uranium and thorium for purposes of conducting research and development activities with military equipment.

In accordance with 10 CFR 20.2002 and 10 CFR 40.14, issuance of the license amendment would authorize the transfer and off-site disposal of two M2A2 Bradley Fighting Vehicles which are contaminated with depleted uranium. As discussed further below, the two vehicles would be disposed of at U.S. Ecology, a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility in Idaho. The Licensee requested this action in a letter dated September 13, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register.**

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's September 13, 2005, license amendment request that transfer of its two M2A2 Bradley Fighting Vehicles to U.S. Ecology's disposal facility be authorized. In addition to granting the licensee's license amendment request, the proposed action would also grant, pursuant to 10 CFR 40.14, an exemption to U.S. Ecology from 10 CFR Part 40 licensing requirements. 10 CFR 40.14 provides that the Commission may, upon application by an interested person, "or upon its own initiative, grant such exemptions" from the 10 CFR Part 40 requirements "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." Under the exemption granted to U.S. Ecology any depleted uranium on the two vehicles would, upon their receipt at U.S. Ecology's disposal facility, no longer be subject to NRC regulation and would no longer be NRC licensed material. The 10 CFR 40.14 exemption in this case is equivalent to (1) prior EA determinations on 10 CFR 20.2002 requests in which disposal of depleted uranium at RCRA hazardous waste disposal facilities were approved; and (2) previous related exemptions to the effect that the materials at issue were exempt from further Atomic Energy Act and NRC licensing requirements.

Need for the Proposed Action

The Licensee needs this license change in order to dispose of the two M2A2 Bradley Fighting Vehicles that are contaminated with hazardous wastes at an appropriate facility. The two vehicles also have low-level contamination from depleted uranium, specifically, less than 800 microcuries total depleted uranium on a total mass of 58,000 pounds in 2,800 cubic feet of material. NRC is fulfilling its

responsibilities under the Atomic Energy Act to make a timely decision on a proposed license amendment that ensures protection of public health and safety and the environment.

Environmental Impacts of the Proposed Action

The NRC staff has reviewed the evaluation performed by the Licensee to demonstrate compliance with the 10 CFR 20.2002 alternate disposal criteria. Under these criteria, a licensee may seek NRC authorization to dispose of licensed material using procedures not otherwise authorized by the NRC's regulations. A licensee's supporting analysis must show that the radiological doses arising from the proposed 10 CFR 20.2002 disposal will be as low as reasonably achievable and within the 10 CFR part 20 dose limits.

The disposal of the military vehicle debris containing less than 800 microcuries of depleted uranium will result in a dose of less than 1 millirem to a member of the public. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Based on its review, the NRC staff considered the impact of the residual radioactivity at the disposal site. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts, and concludes that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the very small amounts of radioactive material involved, the environmental impacts of the proposed action are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Idaho Department of Environmental Quality for review on May 10, 2006. On July 28, 2006, the State responded by letter. The State agreed with the health and safety conclusions of the EA, but provided comments as to NRC jurisdiction of the material at U.S. Ecology. The NRC revised the EA to explain that pursuant to the proposed exemption, the material, upon its receipt at U.S. Ecology's disposal facility, would no longer be NRC licensed material and would thus no longer be subject to NRC regulation.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

(1) Letter dated September 13, 2005, with Attachment 1 "Aberdeen Proving Ground Request for Approval of Proposed Procedures in accordance with 10 CFR 20.2002", Enclosure 2, "MicroShield Exposure Rates for Hypothetical Transportation Worker, Members of the General Public, and Disposal Facility Workers", and Enclosure 3, "RESRAD Computer code Summary Report Resident Farmer" [ADAMS Accession No. ML052870504].

(2) Technical Review of Code of Federal Regulations (10 CFR) part 20.2002 Request by Aberdeen Test Center [ML060310247] and Safety Evaluation Report: 10 CFR 20.2002 Request By Aberdeen Test Center [ML060310257].

(3) Title 10 Code of Federal Regulations, part 20, "Standards for Protection Against Radiation."

(4) Title 10, Code of Federal Regulations, part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 1st day of September 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–15132 Filed 9–12–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Operations Inc.; James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of part 50 of Title 10 of the Code of Federal Regulations (10 CFR), Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," issued to Entergy Nuclear Operations, Inc. (the licensee), for the operation of the James A. FitzPatrick Nuclear Power Plant (JAF) located in Oswego County, NY.

Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action: The proposed action would allow the usage of the Hemyc fire barrier wrap installed in the West Cable Tunnel to protect a safe shutdown power cable. The licensee stated that recent tests indicate the Hemyc fire barrier lacks sufficient evidence to demonstrate that it meets the acceptance criteria for a rated 1 hour fire barrier. But the licensee states that the Hemyc fire barrier will provide a reasonable level of resistance to fire due to the fact that the area where the fire barrier wrap is located has no significant ignition sources other than cables, has available manual suppression capability, is equipped with automatic fire suppression and fire detection, and administrative controls limit the presence of transient combustible materials and transient ignition sources.

The proposed action is in accordance with the licensee's application dated July 27, 2005, as supplemented on May 17, 2006.

The Need for the Proposed Action: The proposed exemption from 10 CFR part 50, Appendix R, III.G.2.c, is needed in response to NRC Information Notice 2005–07. The information notice provided licensees the details of Hemyc electrical raceway fire barrier system (ERFBS) full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for a 1 hour rated fire barrier, as originally designed.

Environmental Impacts of the Proposed Action: The NRC has completed its safety evaluation of the proposed action and concludes that the configuration of the fire zone under review provides reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. The details of the staff's evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. Based on the presence of area-wide smoke detection; the presence of automatic area and in-tray fire suppression and manual fire suppression; fire barrier protection at the boundaries of the fire zone; the existing Hemyc configuration in the fire zone; implementation of transient combustibles controls including proposed revisions for hot work in the vicinity of the Hemyc configuration; and the absence of significant combustible loading and ignition sources, the NRC staff finds that the use of this Hemyc fire barrier in this zone will not significantly increase the consequences from a fire in this fire zone.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action: As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant, dated March 1973.

Agencies and Persons Consulted: In accordance with its stated policy, on August 9, 2006, the NRC staff consulted with the New York State official, John Spath, of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 27, 2005, Agencywide Documents Access and Management System (ADAMS) accession number ML052210382, as supplemented on May 17, 2006, ADAMS accession number ML061530108. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of September 2006.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–15133 Filed 9–12–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 14, 2006 Public Hearing; Sunshine Act Meeting

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 71, Number 166, Pages 50949 and 50950) on August 28, 2006. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's September 21, 2006 Board of Directors meeting scheduled for 2 p.m. on September 14, 2006 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: September 11, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–7653 Filed 9–11–06; 11:55 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Southwestern Medical Solutions, Inc.; Order of Suspension of Trading

September 11, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southwestern Medical Solutions, Inc. ("Southwestern"), a non-reporting issuer quoted on the Pink Sheets under the ticker symbol SWNM, because of questions regarding the accuracy and adequacy of assertions by Southwestern, and by others, concerning, among other things: (1) The existence of applications for U.S. Food and Drug Administration approvals for its Labguard product, (2) the existence of a patent and trademark, and (3) the receipt of an order for the sale of several thousand units of Labguard.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, September 11, 2006 through 11:59 p.m. EST, on September 22, 2006.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–7654 Filed 9–11–06; 12:03 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54407; File No. SR–NYSE–2005–43]

Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Rule 607 Relating to the Classification of Arbitrators as Public or Industry

September 6, 2006.

I. Introduction

On June 17, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Rule 607 relating to the classification of arbitrators as public or industry. On August 4, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] In this amendment, the Exchange stated that the rule change will become effective 90 days following the publication of this order in the **Federal Register**. The NYSE will update and reclassify arbitrators during this time period. The proposed rule change was published for comment in the **Federal Register** on August 29, 2005,[4] and the Commission received 38 comments on the proposal.[5] The majority of commenters are lawyers that represent investors in arbitrations. This order approves the proposed rule change as amended.

II. Description of the Proposal

Arbitration panels for disputes involving customers or non-members in which the damages are alleged to exceed $25,000 are comprised of three arbitrators: Two public arbitrators and one from the securities industry. A customer or non-member also may request at least a majority of arbitrators from the securities industry.

Exchange Rule 607(a)(2) currently classifies an arbitrator as from the securities industry if he or she: (1) Is, or within the past five years was, associated with certain entities related to the securities industry (or retired from, or spent a substantial part of his or her career with such an entity); (2) is an attorney or other professional who devoted 20 percent or more of his or her work effort to securities industry clients within the past two years; or (3) is registered under the Commodity Exchange Act, or is a member of a registered futures association or any commodity exchange or is associated with any such person.

Exchange Rule 607(a)(3) currently classifies an arbitrator who is not from the securities industry as a public arbitrator. However, a person cannot be classified as a public arbitrator if he or she has a spouse or household member who is associated with certain entities related to the securities industry.

The NYSE is concerned that some arbitrators currently classified as public have affiliations with entities that have securities industry ties such as banks, insurance companies, mutual funds, holding companies and asset management firms. In an effort to enhance investor confidence in the NYSE arbitration forum, and in order to further ensure that persons serving as public arbitrators do not have ties to the securities industry or related firms, the Exchange proposed to amend Rule 607.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which supplemented the original filing, the Exchange modified the implementation date for the proposed rule change and clarified certain aspects of the filing.

[4] *See* Exchange Act Release No. 52314 (Aug. 22, 2005), 70 FR 51104 (Aug. 29, 2005).

[5] Several commenters filed letters regarding the amendments to Exchange Rule 607 in connection with the proposed change to NASD Rule 10308 (NASD 2005–094), which also governs non-public/industry and public arbitrators. The NYSE and the Commission have identified letters in response to both rule filings that address the proposed changes to NYSE Rule 607.

See letters from Bradford D. Kaufman, Esq., Greenberg Traurig, dated Oct. 7, 2005 ("Kaufman"); Jonathan W. Evans, Esq., Jonathan W. Evans & Associates, dated Sept. 21, 2005 ("Evans"); L. Jerome Stanley, dated Sept. 20, 2005 ("Stanley"); Thomas D. Mauriello, Law Offices of Thomas D. Mauriello, dated Sept. 20, 2005 ("Mauriello"); William P. Torngren, Law Offices of William P. Torngren, dated Sept. 20, 2005 ("Torngren"); Jason R. Doss, Page Perry, LLC, dated Sept. 20, 2005 ("Doss"); Brian M. Greenman, Esq., dated Sept. 20, 2005 ("Greenman"); Teresa M. Gillis, Shustak, Jalil & Heller, dated Sept. 20, 2005 ("Gillis"); Susan N. Perkins, Esq., dated Sept. 20, 2005 ("Perkins"); Charles C. Mihalek, Esq. and Steven M. McCauley, Esq., Charles Mihalek, P.S.C., dated Sept. 20, 2005 ("Mihalek"); Steven J. Gard, Esq., Gard, Smiley, Bishop & Dovin LLP, dated Sept. 20, 2005 ("Gard"); Scott L. Silver, Blum & Silver, LLP., dated Sept. 20, 2005 ("Silver"); Mitchell S. Ostwald, Esq., Law Offices of Mitchell S. Ostwald, dated Sept. 20, 2005 ("Ostwald"); Joel A. Goodman, Esq., Goodman & Nekvasil, P.A., dated Sept. 20, 2005 ("Goodman"); Alan C. Friedberg, Pendleton, Friedberg, Wilson & Hennessey, P.C., dated Sept. 19, 2005 ("Friedberg"); Debra G. Speyer, Law Offices of Debra G. Speyer, dated Sept. 19, 2005 ("Speyer"); Harvey H. Eckart, Eckart & Leonetti, P.A., dated Sept. 19, 2005 ("Eckart"); G. Mark Brewer, Esq., Brewer Carlson, LLP, dated Sept. 19, 2005 ("Brewer"); Steve A. Buchwalter, first letter dated Sept. 19, 2005 and second letter dated Sept. 13, 2005 ("Buckwalter"); Royal B. Lea, III, Esq., Bingham & Lea, and Randall A. Pulman, Esq., Pulman, Bresnahan & Pullen, LLP, dated Sept. 19, 2005 ("Lea"); Richard P. Ryder, Securities Arbitration Commentator, Inc., dated Sept. 19, 2005 ("Ryder"); Eliot Goldstein, Esq., dated Sept. 19, 2005 ("Goldstein"); Philip M. Aidikoff, Aidikoff & Uhl, dated Sept. 16, 2005 ("Aidikoff"); Bruce E. Baldinger, Esq., Baldinger & Levine, L.L.C., dated Sept. 16, 2005 ("Baldinger"); Henry D. Fellows, Jr., Fellows Johnson & La Briola, LLP, dated Sept. 16, 2005 ("Fellows"); Rosemary J. Shockman, Public Investors Arbitration Bar Association, dated Sept. 15, 2005 ("PIABA"); James D. Keeney, dated Sept. 15, 2005 ("Keeney"); Bill Fynes, dated Sept. 15, 2005 ("Fynes"); Jay A. Salamon, Hermann, Cahn & Schneider LLP, dated Sept. 14, 2005 ("Salamon"); Jorge A. Lopez, Esq., Law Offices of Jorge A. Lopez, P.A., dated Sept. 14, 2005 ("Lopez"); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated Sept. 14, 2005 ("Caruso"); Scott C. Ilgenfritz, dated Sept. 14, 2005 ("Ilgenfritz"); Tracey Pride Stoneman, Tracey Pride Stoneman, P.C., dated Sept. 14, 2005 ("Stoneman"); Michael J. Willner, Miller Faucher and Cafferty LLP, dated Sept. 13, 2005 ("Willner"); Richard M. Layne, Layne & Lewis, LLP, dated Sept. 13, 2005 ("Layne"); Michael Knoll, Esq., Law Offices of Michael Knoll, dated Sept. 13, 2005 ("Knoll"); John J. Miller, Law Offices of John J. Miller, P.C., dated Sept. 13, 2005 ("Miller"); and Seth E. Lipner, Professor of Law, Zicklin School of Business Baruch College and Member, Deutsch & Lipner, dated Sept. 8, 2005 ("Lipner").

The proposed amendments would: (1) Expand the list of entities engaged in the securities business by adding certain membership categories not previously specifically mentioned (but, nevertheless, contemplated by the current rule), and by adding a catch-all for any "other organization engaged in the securities business;" [6] (2) preclude any individual who is associated with any entity that controls, is controlled by, or is under common control with an entity on the expanded list from being classified as a public arbitrator; and (3) preclude any individual from being classified as a public arbitrator who has an immediate family member associated with an entity on the expanded list. The amendment would also define which persons are included within the term "immediate family member."

In order to ensure the integrity of the classification of public arbitrators, the Exchange will update and reclassify arbitrators in compliance with the amended rule if approved.

III. Summary of Comments

The Commission received 38 letters on the proposal.[7] Several commenters believed that the changes proposed were laudatory.[8] Many, nonetheless, viewed the proposed amendments as insufficient to address what they considered as an arbitration process that is unfair to investors. Their concern generally centered in three areas: (1) The inclusion of any industry arbitrators on arbitration panels; (2) the criteria for qualifying as a public arbitrator; and (3) the desire to harmonize NYSE and NASD rules on this issue.[9]

Inclusion of Industry Arbitrators

The majority of commenters expressed the view that the mandatory inclusion of arbitrators from the securities industry on arbitration panels creates an unfair burden for investors seeking redress, and stated that arbitration panels should be comprised only of individuals with no ties to the securities industry.[10] A number of commenters maintained that the mandatory inclusion of securities industry arbitrators creates a perception, rightly or wrongly, that the process is unfair and biased against investors. Their suggestion was to eliminate the securities industry arbitrator.[11] One commenter opined that, in cases where special expertise is important, the securities industry arbitrator becomes a de facto expert witness, providing the public arbitrators with his or her opinion in secret, and depriving investors of due process because they and their counsel would have notice of or a chance to rebut the opinion.[12]

Criteria for Public Arbitrators

Several commenters also stated that the proposed rule change would not adequately preclude persons with ties to the securities industry from meeting the definition of public arbitrator.[13] Currently, Rule 607(a)(2)(iv) permits an attorney, accountant or other professional to serve as a public arbitrator if that person has devoted less than 20 percent of his or her work to securities industry clients within the last two years.[14]

Some commenters favored amending the definition of public arbitrator to exclude all attorneys, accountants or other professionals who have represented the securities industry.[15] One commenter stated that arbitrators with industry ties have an "inherent bias" in favor of the industry, and noted that the rule currently allows persons with industry bias, such as an attorney with ties to the securities industry, to serve on panels "under the guise of being public." [16] Another commenter maintained that attorneys with industry ties who serve as public arbitrators would have a vested interest in keeping monetary awards low.[17]

Harmonizing NYSE and NASD Rules

One commenter expressed concern that the proposed rule change would "differ significantly" from the Uniform Code of Arbitration ("UCA") classification rule, and stated that the NYSE rule change and NASD's proposal to amend its rule on the same subject should have been "brought to the Commission with the same text after being vetted by [the Securities Industry Conference on Arbitration ("SICA")]." [18] In this commenter's view, the SEC should "at least compel" the NYSE and NASD to develop "identical solutions" to this issue.[19]

IV. NYSE Response to Comments

Responding to commenters' concerns, the NYSE noted that securities industry arbitrators add value to the arbitration process.[20] It also stated that, as the administrator of a neutral forum, it believes public investors, non-members and members should have input into procedures by which arbitrators are appointed. Moreover, NYSE is a member of SICA, and it will continue to consider any rule changes regarding panel compositions that SICA may adopt to the UCA.

The NYSE also stated that the 20 percent limitation on the securities activities of public arbitrators allows individuals that have minimal ties to the securities industry to serve as arbitrators. In its view a complete bar on professionals with any ties to the securities industry could also prohibit professionals who primarily represent public investors from serving on arbitration panels.

Acknowledging commenters' concerns regarding ties public arbitrators have to the securities industry, the NYSE also indicated that it will review the definition of public arbitrator to address persons whose firms receive a percentage of revenue derived from securities industry clients. NYSE stated that it will propose a separate rule amendment to prohibit certain individuals from serving as public arbitrators if their firms receive a certain percentage of revenue from securities industry clients, which would be similar to the current restrictions in NASD Rule 10308.

In addressing the specific differences between its proposed rule change and the rule change proposed by NASD, the NYSE stated that it defined "immediate family" and "control" to ensure that

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[6] These organizations would include any entity engaging in securities transactions, including banks and other financial institutions. Telephone conversation among Karen Kupersmith, Director of Arbitration, NYSE; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, SEC; and Michael Hershaft, Special Counsel, SEC (July 26, 2006).

[7] *See* footnote 5.

[8] *See, e.g.*, Ilgenfritz, Stoneman, Buchwalter, Willner, and PIABA.

[9] *See* Ryder

[10] *See, e.g.*, Willner, Caruso, Knoll, PIABA, Ilgenfritz, Buchwalter, Mauriello, Torngren, Aidikoff, Doss, Brewer, Lea, Speyer, Keeney, Stanley, Layne, Baldinger, Eckart, and Fellows.

[11] *See, e.g.*, Torngren and Lewis.

[12] *See* Willner.

[13] *See, e.g.*, Evans, Caruso, Lipner and Lopez.

[14] Several commenters explicitly or implicitly cited to NASD Rule 10308(a)(5)(A)(iv), which prohibits an attorney, accountant or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from securities activities instead of the NYSE limitation. *See, e.g.*, PIABA, Stoneman, Buchwalter, Salamon, and Keeney.

[15] *See, e.g.*, Evans and Caruso.

[16] *See* Lopez.

[17] *See* Lipner.

[18] *See* Ryder.

[19] *Id.* In particular, this highlighted the differences in who would be considered an "immediate family member" under each rule. While the NYSE rule would exclude immediate family members of associated persons, the NASD rule would exclude immediate family members of all control-related parties. In addition, the NYSE definition of immediate family member would include in-laws, while the NASD definition would not. Moreover, the NASD include step-relatives, while the NYSE rule would not. Finally, while the NYSE definition of "control" would not extend to the immediate family of the "control-related parties," the NASD's definition would.

[20] *See* Letter from Mary Yeager, NYSE, to Katherine A. England, SEC, dated June 5, 2006 ("Yeager").

people with perceived ties to the securities industry would not be defined as public arbitrators, while avoiding eliminating from the arbitrator pool individuals with minimal ties to the securities industry.

Finally, the NYSE stated that alternatives to panel composition and the method by which arbitrators are classified are beyond the scope of this rule filing. It therefore declined to address these issues at this time.[21] The NYSE also stated that it is prepared to discuss those issues at the appropriate time.[22]

V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and, in particular, with section 6(b)(5) of the Act, which requires, among other things, that the NYSE'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.[23]

The Commission believes that the proposed rule change will promote the public interest by limiting certain people who have ties to the securities industry from serving as public arbitrators. In particular, by expanding the list of entities engaged in the securities business and companies they control, the rule will further limit the industry ties the public arbitrator may have. The new definition of "immediate family member" should have a similar result.[24]

The Commission appreciates the comments suggesting the elimination of securities industry arbitrators, and the further restriction on persons who have any ties to the securities industry from serving as public arbitrators. While these comments are beyond the scope of this rule filing, they raise important questions regarding the arbitration process. We understand that SICA is actively considering proposals from its membership regarding these issues. We note that the NYSE has stated it will review any rule regarding panel composition that SICA adopts to the UCA, and that it will propose a separate amendment further limiting the definition of public arbitrator.

[21] *Id.*

[22] *Id.*

[23] 15 U.S.C. 78f(b)(5).

[24] Section 19(b)(2) of the Act requires the Commission to approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act, and the applicable rules and regulations thereunder. This standard does not require the NYSE, NASD or SICA rules to be identical.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[25] that the proposed rule change (SR–NYSE–2005–43), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15187 Filed 9–12–06; 8:45 am]

BILLING CODE 8010–01–P

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54408; File No. SR–DTC–2006–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the LENS Service

September 6, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 28, 2006, the Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will discontinue the posting of Asset-Backed Security notices on DTC's LENS system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1991, DTC created the LENS service to reduce the amount of paper that participants received in connection with DTC's distribution of legal and other notices. Participants consequently could access such notices through DTC's proprietary PTS 3270 terminal network.[5] In 2000, DTC enhanced this process by making the LENS service available over the Internet.[6] Benefits of the LENS service include: (a) Reducing distribution costs that are born by participants and (b) allowing for other enhancements relating to notice distribution, including: (i) The identification of CUSIP numbers, (ii) participants' ability to search by CUSIP, (iii) participant access to a computer record of past notices with automatic order capability, and (iv) equitable billing (*e.g.* a participant only pays for those notices that it orders).

Recently, DTC has studied whether additional enhancements and efficiencies can be brought to the LENS service in terms of the value to participants of the information provided them through LENS and the associated costs. As part of this process, DTC reviewed a current practice relating to the posting of Asset-Backed Security ("ABS") notices on LENS.[7] Such ABS notices are now generally available over the Internet on the agents' Web sites and have been retrieved by DTC and posted on LENS at considerable expense. In light of the accessibility of ABS notices from other sources and the expense incurred by DTC in retrieving the information, DTC consulted with many of the participants with current subscriptions to the ABS portion of LENS and learned that DTC's posting of this information on LENS is of limited value versus the alternative of participants being able to obtain much

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 (June 19, 1991) [File No. SR–DTC–91–08].

[6] Securities Exchange Act Release No. 34–43964 (Feb. 14, 2001), 66 FR 1190 (Feb. 22, 2001) [File No. SR–DTC–2000–18].

[7] ABS notices provide investment and financial information specific to a respective ABS (*e.g.*, monthly principal and interest factors, credit worthiness, etc.).

of the information directly from agents' Web sites.

Therefore, DTC will no longer post ABS notices on LENS. DTC will distribute an Important Notice to its participants to notify them of this change to the LENS service and inform participants as to how they may obtain DTC's assistance in obtaining ABS information.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because it controls costs associated with a service provided by DTC and therefore does not significantly affect the respective rights or obligations of DTC or persons using this service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(4)[10] thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–DTC–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–DTC–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 change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html*. 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 submission should refer to File No. SR–DTC–2006–12 and should be submitted on or before October 4, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15191 Filed 9–12–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54411; File No. SR–NASD–2004–171]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements

September 7, 2006.

I. Introduction

On November 2, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend NASD Rule 2340, which relates to customer account statements. On February 2, 2005, NASD filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on February 16, 2005.[5] The Commission received fifteen comment letters in response to the proposed rule change.[6] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, NASD changed the proposed effective date from 30 days following Commission approval to 180 days following Commission approval, and changed the reference to "each customer" to "the customer" in the sentence proposed to be added as the second sentence to paragraph (a) of Rule 2340.

[5] Securities Exchange Act Release No. 51181 (Feb. 10, 2005), 70 FR 7990 (Feb. 16, 2005) ("Notice").

[6] *See* letter dated February 17, 2005 from Christopher Charles, President, Wulff, Hansen & Co. ("Wulff, Hansen"); email dated April 21, 2005 from Geraldine Genco ("Genco"); eight letters (dated February 28, 2005 from Lisa Roth, President, ComplianceMax Financial, LLC, dated March 2, 2005 from Candy J. Lee, NCM, CFP, President, Financial Services International Corp., dated March 7, 2005 from Rod P. Michel, World Trade Financial Corporation, dated March 4, 2005 from Robert L. Savage, President, Leonard Securities, Inc., dated March 7, 2005 from Robert J. Schoen, President, Quest Securities, Inc., dated March 2, 2005 from Matthew S. Merwin, CFP, President, FMN Capital Corporation, dated March 7, 2005 from Warner Griswold, Chief Operating Officer, Green Street Advisors, Inc., and dated March 11, 2005 from Craig Biddick, President, Mission Securities Corporation) that were versions of a form letter that the National Association of Independent Broker Dealers posted on its website and encouraged its members to submit ("NAIBD"); letter dated March 2, 2005 from John Miller ("Miller"); letter dated March 9, 2005 from Rosemary J. Shockman, President, Public Investors Arbitration Bar Association ("PIABA"); letter dated March 8, 2005 from Andrew C. Small, General Counsel, Scottrade, Inc. ("Scottrade"); letter dated March 9, 2005 from John Polanin, Jr., Chairman, Self Regulation and Supervisory Practices Committee, Securities Industry

Continued

approves the proposed rule change, as amended.

II. Description of the Proposal and Comment Summary

A. Description

Currently, clearing firms may include language in customer account statements advising customers to immediately report to the firm any discrepancies in balances or positions. However, these advisories may not necessarily direct customers to report discrepancies in writing, nor are the advisories required to be included on customer account statements. In 2001, the U.S. General Accounting Office ("GAO") recommended, among other things, that self-regulatory organizations ("SROs"), such as NASD, seek to inform investors that they should document any unauthorized trading in their accounts in writing.[7] Written documentation is important because, in the event a firm goes into liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer can prove otherwise.[8]

Consistent with GAO's recommendation, the proposed rule change would amend NASD Rule 2340 to require general securities firms to include in monthly account statements an advisory indicating that a customer should report promptly any inaccuracy or discrepancy in its account to its clearing firm and (if it is a different firm) its introducing firm. The advisory statement also would inform customers that any oral communications should be re-confirmed in writing to further protect customers' rights, including rights under SIPA. The proposed disclosure requirement would not impose any limitation on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally. Further, a customer's failure to promptly raise such concerns, either in writing or orally, would not preclude a customer from reporting an inaccuracy or discrepancy in his or her account during any SIPC liquidation of his or her brokerage or clearing firm.[9]

The 180-day delay in the rule's effectiveness requested in Amendment No. 1 to the proposal is intended to give NASD member firms time to make necessary changes to their customer documentation and systems.

B. Comment Summary

The Commission received fifteen comments in response to the proposed rule change.[10] Four commenters generally supported the proposal.[11] Eleven generally opposed it.[12]

Impact on Investors

Three commenters argued that the proposal could lead to claims that customers who do not promptly report errors or document them in writing would give up rights to assert claims against brokerage firms, or that brokerage firms could misuse the proposed advisory statement by arguing that customers who fail to follow it are barred from bringing claims.[13]

Contact Information

Four commenters suggested that the advisory statement direct customers to address reports to a specific area within a firm where responses could be managed and supervised, rather than to an address or phone number that might cause a report to be received initially by the registered representative handling the account of the customer making the report.[14]

Including Advisory Statement on Confirmations

Three commenters suggested requiring that the proposed advisory statement be included not only in account statements, but also in trade confirmations.[15]

Scope of Statement

Two commenters believed that the proposed statement is overbroad and suggested narrowing it to apply only to unauthorized trades.[16]

Role of Clearing Firms

Two commenters sought clarification as to the role clearing firms would have in connection with disputed transactions.[17]

Method of Delivering Notice

One commenter recommended amending the proposal to allow brokers to deliver the proposed advisory statement "with" (rather than "in") account statements, which the commenter believes would better accommodate certain click-through processes for delivering regulatory disclosures to customers.[18]

Time for Reporting Discrepancies

Two commenters recommended setting a specified period within which investors should report discrepancies to avoid customer abuses, such as using post-settlement market information to undo transactions.[19]

Level Playing Field

One commenter maintained that the proposal would subject brokerage firms to a standard not applicable to commercial banks.[20]

Similar NYSE Proposal

One commenter[21] recommended that, in the interest of regulatory consistency, the proposal be conformed to a similar proposed NYSE rule change.[22]

III. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with section 15A(b)(6) of the Act,[23] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

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Association ("SIA"); and letter dated April 4, 2005 from Josephine Wang, General Counsel, Securities Investor Protection Corporation ("SIPC").

[7] See GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors*, GAO–01–653 (May 25, 2001). *See also* GAO–03–811 (July 11, 2003); GAO–04–848R Follow-Up on SIPC (July 9, 2004). GAO has since been renamed the Government Accountability Office.

[8] SIPC advises investors who discover an error in a confirmation or statement to immediately bring the error to the attention of their brokerage firm in writing and to keep a copy of any such writing. *See* SIPC, "Documenting Unauthorized Trading" (available at *http://www.sipc.org/how/unouthorized.cfm*); SIPC, "How SIPC Protects You" (available at *http://www.sipc.org/how/brochure.cfm*).

[9] *See* Notice at 70 FR 7991. The NYSE has proposed a similar rule change. *See* initial proposed rule change and Amendment No. 1 thereto in File No. SR–NYSE–2005–09 (available on the NYSE's Web site).

[10] *See* footnote 6, *supra*.

[11] Genco; Scottrade; SIA; and SIPC.

[12] Miller, NAIBD (eight commenters submitted letters based on the NAIBD form letter), PIABA, and Wulff, Hansen. Wulff, Hansen suggested abandoning the proposal or, in the alternative, modifying it to require the new advisory statement only at account opening and annually thereafter, to reduce printing costs and other burdens.

[13] Miller, PIABA, and Wulff, Hansen. Miller recommended clarifying that a customer's failure to make a report does not limit the customer's right to raise concerns regarding account inaccuracies or discrepancies at any time, including during a SIPC liquidation. PIABA also recommended clarifying that the proposed additional statement shall not be used to defend against a customer claim.

[14] Genco, Miller, PIABA, and SIPC. Miller also recommended that the statement identify a person at a clearing firm to whom errors should be reported, if the clearing and introducing firms for the account are different.

[15] Miller, PIABA, and SIPC. Miller and PIABA also suggested requiring that the statement be presented in bold type. PIABA recommended requiring that the statement be presented in plain language on the first page of account statements.

[16] Miller and PIABA.

[17] Genco and NAIBD. For example, Genco asked whether the proposal is intended to require clearing firms to escalate a complaint to the proper party in the executing firm.

[18] Scottrade.

[19] NAIBD and SIPC.

[20] Wulff, Hansen.

[21] SIA.

[22] *See* footnote 9, *supra*.

[23] 15 U.S.C. 78o–3(b)(6).

trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the provision of the Act noted above because it will help investors understand procedures for preserving their rights in the event of erroneous or unauthorized transactions in their accounts.

While the Commission believes that the proposal would improve NASD's current customer account disclosure requirements, we believe that the disclosure would be more beneficial to investors if it required NASD members to include on account statements both introducing and clearing firm contact information sufficient to allow investors to timely report unauthorized transactions or other account discrepancies to both firms (if the firms are different). We believe such disclosure would be consistent with current Commission guidance on this issue.[24] We also believe that such disclosure would address the concerns of some commenters that the current proposal could be enhanced to ensure that a customer's concern is delivered to the most appropriate person at the firm.[25] The Commission therefore encourages NASD to issue a Notice to Members regarding the proposed change to Rule 2340 that reminds member firms of their current obligations with respect to customer account statements.[26]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[27] that the proposed rule change (SR–NASD–2004–171), as amended, be, and hereby is, approved,[28] effective 180 days from the date of this order. NASD has committed to announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following approval of the proposal.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–15186 Filed 9–12–06; 8:45 am]

BILLING CODE 8010–01–P

[24] *See* Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992) (amending the SEC's net capital rule and explaining the staff's interpretation that to avoid more stringent capital requirements under the rule, an introducing firm must have in place a clearing agreement with a registered broker-dealer that, among other things, contains "the name and telephone number of a responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account."). *See also* NYSE Interpretation Handbook at 4105 (carrying organization phone number may appear on the back of the customer account statement, but, if so, it must be in "bold" or "highlighted" text).

[25] *See* footnote 14, *supra.*

[26] *See* footnote 24, *supra.*

[27] 15 U.S.C. 78s(b)(2).

[28] In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In particular, the Commission considered and granted NASD's request to delay effectiveness of the proposal by 180 days to allow NASD member firms sufficient time to implement the change required by the proposal.

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54409; File No. SR–OCC–2006–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Name Change of a Board Committee and of a Securities Market

September 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 17, 2006, The Options Clearing Corporation ("OCC") 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 primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[2] whereby the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reflects the renaming of OCC's Membership/Margin Committee to the Membership/Risk Committee and of Nasdaq National Market to the Nasdaq Global Market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reflect that OCC has renamed the Membership/Margin Committee to the Membership/Risk Committee and that Nasdaq has renamed the Nasdaq National Market to the Nasdaq Global Market.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it reflects the appropriate titles of an OCC Board committee and a securities marketplace. The rule change is not inconsistent with the existing by-laws and rules of OCC, including those proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2006–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2006–13 and should be submitted on or before October 4, 2006.

[6] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15189 Filed 9–12–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10525 and #10526]

New Jersey Disaster Number NJ–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1653–DR), dated 07/07/2006.

Incident: Severe Storms and Flooding.

Incident period: 06/23/2006 through 07/10/2006.

Effective Date: 09/06/2006.

Physical Loan Application Deadline Date: 09/11/2006.

EIDL Loan Application Deadline Date: 04/09/2007.

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, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 07/07/2006, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/11/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–15211 Filed 9–12–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5544]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 28 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Susan M. Clark, Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2023.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

April 3, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed retransfer of defense articles or services involving major defense equipment (MDE) in amount of $14,000,000 or more.

The transaction contained in the attached certification involves the retransfer of four hundred thirty-one (431) YPR–765 vehicles and 555 TOW 71E1B missiles to Egypt from the Royal Netherlands Army (RNLA).

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 058–05.

April 4, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture of significant military equipment and the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in the United States of the Russian RD–180 two-chamber rocket motors for use on Atlas launch vehicles, including the USAF Evolved Expandable Launch Vehicle.

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 057–05.

April 7, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement and a manufacturing license agreement for manufacture and export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware Turkey to support the sale, operations, maintenance and retrofit of S–70B Helicopters for the Republic of Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 001–06.

April 7, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed multi-contract effort for manufacture and export of defense articles or defense services sold commercially in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Canada to support the sale, and in-service support of 28 H–92 Helicopters for the Canadian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 002–06.

April 10, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware for training in counterterrorism, crisis response, dignitary protection and force protection for the Iraqi Ministry of Interior in support of Operation Iraqi Freedom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 072–05.

May 11, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles for the manufacture in the Republic of Korea of F–15 wings, forward fuselage and adapter shape assemblies for return to the United States for final assembly.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 071–05.

May 11, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed authorization for the sale of significant military equipment sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the sale and transfer of ownership of the AMC–23 commercial communications satellite from a U.S. company to a company in the United Kingdom. The satellite was successfully launched December 28, 2005 and is currently in orbit.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 073–05.

May 11, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed authorization for the export of significant military equipment in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of one (1) commercial communications satellite to international waters for the purpose of launch on the Sea Launch platform and to transfer ownership in orbit to a U.S. company.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 007–06

May 11, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am

transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware to Australia, Canada and Malaysia for design, production and pre-launch/post-launch support of the MEASAT–1R commercial communications satellite and associated ground system for Malaysia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 013–06.

May 15, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Algeria and Spain of technical data, hardware and assistance related to a United Information and Telecommunications Network Project (RUNITEL) for the Algerian Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 039–05.

May 15, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Israel for the manufacture of F/A–18 A/B/C/D Series aircraft landing gear parts and components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 005–06.

May 15, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Italy to support the manufacture and servicing of CH–47C helicopter, composite blades, parts and ground support equipment for end-use in Egypt, Italy, Morocco, and the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 012–06.

May 17, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and defense services for the manufacture of Model 2093 Minehunting Sonar System for the end-use in Australia, Belgium, Canada, Finland, France, Germany, Greece, India, Italy, Japan, the Netherlands, Portugal, Saudi Arabia, Spain, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 006–06.

May 17, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware to Mexico for the manufacture and assembly of filter connectors which offer electromagnetic interference (EMI) and electromagnetic pulse (EMP) protection for sensitive circuits used in military electronic systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 015–06.

May 18, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the amendment of a current manufacturing license agreement with Germany for the manufacture of tank

fire control systems for end-use by the governments of Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Norway, the Netherlands, Spain, Sweden, Switzerland, Thailand, Turkey and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 064–05.

May 23, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed authorization for the export of significant military equipment in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of three (3) DIRECT TV commercial communications satellites to international waters for the purpose of launch on the Sea Launch platform and to transfer ownership in orbit to a U.S. company.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 074–05.

June 2, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer to Israel of technical data, defense services and hardware for the manufacture of the MOD II and MOD IIC GYROFLEX® Gyro and Accelerometer as part of a Land Navigation System (LANS) for sale to various countries and for incorporation into the Japanese PAC–3 Patriot Missile Upgrade.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 009–06.

June 7, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, and the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware to Japan for the manufacture of sporting rifles for sale in the United States and Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 062–05.

June 20, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Israel for the development, production and installation of equipment for the Israeli Digital Army Program (DAP) for end-use by the Israeli Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 059–05.

20, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Germany for the manufacture, refurbishment, repair, modification and upgrade of the AIM–9L and AIM–9M Missile.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 016–06.

June 22, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed authorization for the export of significant military equipment in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of eight (8) commercial communications satellites to Italy for integration and testing and further export to Kazakhstan and Russia for launch. This notification is for the export of the satellites only. The launch services have been approved under two separate Technical Assistance Agreements. Transfer of ownership will be made once the satellites are in orbit to a U.S. company.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause

competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 017–06.

June 26, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting, herewith, certification of proposed export authorizations for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Japan for the Japanese Patriot PAC–3 missile assembly and manufacturing program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 023–06.

June 22, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of firearms sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 800 LMT 5.56mm Select Fire rifles, 900 spare barrels and 5,000 spare magazines to the Hashemite Kingdom of Jordan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 004–06.

July 28, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware to Singapore for the sale of F–15SG aircraft to the Government of Singapore.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 024–06.

July 28, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data, defense services, hardware and manufacturing know-how to Mexico for the manufacture, inspection and testing of electrical wiring harnesses, power generators, bellows and sensors used on launch and space vehicles, and on turbine engines powering military aircraft and tanks.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 027–06.

July 28, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles for development of the Combat System Core for the S–80A Submarine for end use by the Spanish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 032–06.

July 28, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to the United Kingdom for the upgrade of the WAH–64 Apache Attack Helicopter with the Arrowhead® Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensor (M–TADS/PNVS™) and TADS Electronic display and Control (TEDAC).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 042–06.

July 28, 2006.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Japan for the manufacture of various parts and components for the F–15 Environmental Control System (ECS).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Jeffrey T. Bergner,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 044–06.

Dated: September 6, 2006.

Susan M. Clark,

Acting Director, Office of Defense Trade Controls Licensing, Department of State.

[FR Doc. E6–15190 Filed 9–12–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5515]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Wednesday, September 20, 2006, in Room 6303 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to begin preparations for the 50th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at the International Coffee Organization in London, England from April 30th to May 4th 2007.

The primary matters to be considered include:

—Development of explanatory notes for harmonized SOLAS Chapter II–1;
—Revision of the Intact Stability Code;
—Safety of small fishing vessels;
—Development of options to improve effect on ship design and safety of the 1969 TM Convention;
—Guidelines for uniform operating limitations on high-speed craft;
—Revision of resolution A.266 (VIII);
—Review of SPS Code.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–PSE), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 372–1372.

Due to rigorous scheduling difficulties the Advisory Committee regrets the delay in publication of this notice.

Dated: September 8, 2006.

Michael E. Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–15256 Filed 9–12–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

DATES: Written comments should be received on or before October 13, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0142.
Type of Review: Extension.
Title: Underpayment of Estimated Tax by Corporations.
Form: 2220.
Description: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.
Respondents: Businesses or other for-profit institutions.
Estimated Total Burden Hours: 23,633,634 hours.

OMB Number: 1545–1359.
Type of Review: Extension.
Title: Information Reporting by Passport and Permanent Residence Applicants.
Description: The regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.
Respondents: Individuals or households.
Estimated Total Burden Hours: 750,000 hours.

OMB Number: 1545–0935.
Type of Review: Revision.
Title: U.S. Income Tax Return of a Foreign Sales Corporations (FSC); Schedule P, Transfer Price or Commission.
Form: 1120–FSC.
Description: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.
Respondents: Businesses or other for-profit institutions.
Estimated Total Burden Hours: 1,089,500 hours.

OMB Number: 1545–0956.
Type of Review: Extension.
Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.
Form: 5500–EZ.
Description: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit institutions.
Estimated Total Burden Hours: 6,770,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–15207 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individual and Entities Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly-designated individual and two entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Secretary of the Treasury of one individual and two entities identified in this notice, pursuant to Executive Order 13224, is effective on September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On September 7, 2006, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General, and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual and two entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of additional designees follows:

1. Al-Shami, Husayn (a.k.a. AL-SHAMI, Haj Husayn; a.k.a. Al-Shamy, Husayn; a.k.a. Ashami, Husayn; a.k.a. Shaimi, Husayn; a.k.a. Shamai, Husayn; a.k.a. Shamy, Husayn), Lebanon; DOB 1948; alt. DOB 1954; alt. DOB 1960

2. Bayt Al-Mal (a.k.a. Bayt Al-Mal Lil Muslimeen), Sidon, Lebanon; Harat Hurayk, Beirut, Lebanon; Burj al-Barajinah, Lebanon; Tyre, Lebanon; Al-Nabatiyah, Lebanon; Ba'albak, Lebanon; Hirmil, Lebanon

3. Yousser Company for Finance And Investment, Lebanon

Dated: September 7, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E6–15206 Filed 9–12–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Tuesday, October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Tuesday, October 3, 2006 from 3:30 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: August 31, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–15120 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Monday, September 25, 2006 from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 31, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–15124 Filed 9–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a veteran's dental treatment needs, and the fees associated for these services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to "OMB Control No. 2900–0335" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–2570d is essential to the proper administration of VA outpatient fee dental program. The associated instructions make it possible to communicate with clarity the required procedures, peculiarities, and precautions associated with VA authorizations for contracting with private dentists for the provision of dental treatment for eligible veteran beneficiaries. Since most of the veterans who are authorized fee dental care are geographically inaccessible to VA dental clinics, it is necessary to request information as to the veteran's oral condition, treatment needs and the usual customary fees for these services from the private fee dentist whom the veteran has selected. The form lists the dental treatment needs of the veteran patient, the cost to VA to provide such services, and serves as an invoice for payment. VA uses the data collected to verify the veteran's eligibility to receive dental benefits.

Affected Public: Business and other for profit.

Estimated Total Annual Burden: 4,153 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,460.

Dated: August 24, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–15098 Filed 9–12–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 13, 2006

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

Milk Marketing Orders—Tentative Partial Decision in the Appalachian and Southeast Marketing Areas; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A17 and AO–366–A46; DA–05–06]

Milk in the Appalachian and Southeast Marketing Areas; Tentative Partial Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; tentative partial decision.

SUMMARY: This document is the tentative partial decision proposing to adopt on an interim final and emergency basis amendments to the transportation credit balancing fund provisions of the Appalachian and Southeast milk marketing orders. Specifically, this document would establish a variable mileage rate factor using a fuel cost adjustor to determine the transportation credit payments of both orders, increase the maximum transportation credit assessment rate for both orders and establish a zero diversion limit standard on all milk receiving transportation credits in both orders. Other proposals concerning producer milk provisions and establishing transportation credit provisions on intra-market order movements of milk within the Appalachian and Southeast marketing areas will be addressed in a separate decision to be issued soon. This decision requires determining if producers approve the issuance of the amended orders on an interim basis.

DATES: Comments must be submitted on or before November 13, 2006.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–1031. You may send your comments by the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments to *amsdairycomments@usda.gov*. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This tentative partial decision proposes to adopt amendments that would: (1) Establish a variable transportation credit mileage rate factor which uses a fuel cost adjustor in both orders, (2) increase the Appalachian order's maximum transportation credit assessment rate to $0.15 per hundredweight (cwt) and the Southeast order's maximum transportation credit assessment rate to $0.20 per cwt and (3) establish a zero diversion limit standard on eligible Class I milk receiving transportation credits in both orders.

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, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (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 inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department'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 would 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 manufacturer 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 marketing 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.

During January 2006, the time of the hearing, there were 3,055 dairy farmers pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 3,367 dairy farmers were pooled on the order. Of these, 2,889 dairy farmers in Order 5 (or 95 percent) and 3,218 dairy farmers in Order 7 (or 96 percent) were considered small businesses.

During January 2006, there were a total of 37 plants associated with the Appalachian order (22 fully regulated plants, 11 partially regulated plants, 2 producer-handler and 2 exempt plants). A total of 51 plants were associated with the Southeast order (31 fully regulated plants, 9 partially regulated plants and 12 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 9 (or 24 percent) and 18 (or 35 percent), respectively.

The proposed amendments adopted in this tentative final decision would amend the transportation credit provisions of the Appalachian and Southeast orders. The Appalachian and Southeast orders contain provisions for a transportation credit balancing fund. To partially offset the costs of transporting supplemental milk into each marketing area to meet fluid milk demand at distributing plants during the months of July through December, handlers are charged an assessment year-round to generate revenue used to make payments to qualified handlers.

The proposed amendments would establish a variable mileage rate factor that would be adjusted monthly by changes in the price of diesel fuel (a fuel cost adjustor) as reported by the

Department of Energy for paying claims from the transportation credit balancing funds of the Appalachian and Southeast orders. Currently, the mileage rate of both orders is fixed at 0.35 cents per cwt per mile.

The proposed amendments would increase the maximum rates of the assessments for the Appalachian and Southeast orders. Specifically, the maximum assessment rate for the Appalachian order would be increased by 5.5 cents per cwt from the current 9.5 cents per cwt to 15 cents per cwt. The maximum assessment rate for the Southeast order would be increased by 10 cents per cwt to 20 cents per cwt. The increase in each order's maximum transportation credit assessment rate is intended to minimize the proration and depletion of each order's transportation credit balancing fund during those months when supplemental milk is needed to service the fluid needs of both marketing areas. The increases in the maximum assessment rates for the Appalachian and Southeast orders adopted in this decision are necessary due to, primarily, expected higher mileage reimbursement rates arising from escalating fuel costs and the transporting of milk over longer distances and, secondarily, the expected continuing need to rely on supplemental milk supplies arising from declining local milk production in the marketing areas.

The proposed amendments also would amend the producer milk provisions of the Appalachian and Southeast orders by eliminating the current ability to pool diverted milk associated with supplemental milk receiving a transportation credit payment. While this tentative partial decision does not specifically adopt the Dean Foods Company proposal (published in the hearing notice as Proposal 4), the Department agrees with the need to limit diverted milk pooled on the order made possible by supplemental milk eligible to receive transportation credits.

Currently, the Appalachian and Southeast orders provide transportation credits on supplemental shipments of milk for Class I use provided the milk was from a dairy farmer who was not defined as a "producer" under the orders during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the milk production of the dairy farmer, in aggregate, was received as producer milk under the order during those 2 months and whose milk is produced on a farm not located within the specified marketing areas of either order. The provisions of each order provide the Market Administrator the discretionary authority to adjust the 50 percent milk production standard to assure orderly marketing and efficient handling of milk in the marketing areas.

The proposed amendments would be applied to all Appalachian and Southeast order handlers and producers—both consist of large and small businesses. The proposed amendments will affect all supplemental producers and handlers equally regardless of their size. Accordingly the proposed amendments should not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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. Forms require only a minimal amount of information that 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 their applicability to small businesses.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act (AMAA) and the 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, U.S. Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by November 13, 2006. Six (6) copies of these exceptions should be filed. All written submissions made pursuant to this tentative partial decision 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.

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Louisville, Kentucky, on January 10–12, 2006, pursuant to a notice of hearing issued December 22, 2005, published December 28, 2005 (70 FR 76718).

The material issues on the record of hearing relate to:

1. Transportation Credits
   A. Establishing a variable mileage rate factor.
   B. Increasing the maximum assessment rates.
   C. Establishing diversion limit standards.
2. Determination of emergency marketing conditions.

Findings and Conclusions

This tentative partial decision specifically adopts on an interim basis, proposals published in the hearing notice as Proposals 3, 1 and certain objectives of Proposal 4. Proposal 3 seeks to establish a variable mileage rate factor using a fuel cost adjustor. Proposal 1 seeks to increase the maximum transportation credit assessment rates for both orders. The intent of Proposal 4 is to discourage the volume of milk pooled by diversions by

reducing the amount of transportation credits a handler could receive. A complete discussion and findings on these three proposals appears after the summaries of testimony.

Proposal 2, seeking to establish an intra-market transportation credit provision for both the Appalachian and Southeast orders and Proposal 5, seeking to reduce the volume of milk diverted to an out-of-area plant, will be addressed in a separate decision to be issued soon. Therefore, no further references to Proposals 2 and 5 will be made in this decision.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Transportation Credits

A. Establishing a Variable Mileage Rate Factor

A proposal, published in the hearing notice as Proposal 3, which seeks to establish a variable mileage reimbursement rate factor (MRF) that uses a fuel cost adjustor in the transportation credit payment provisions in both the Appalachian and Southeast orders should be adopted immediately. The orders currently provide for a fixed mileage rate of 0.35 cents per cwt per mile. The proposal was offered by Dairy Farmers of America, Inc., (DFA). DFA is a dairy farmer member-owned Capper-Volstead cooperative with 12,800 member farmers whose milk is pooled throughout the Federal order system, including the Appalachian and Southeast orders.

A witness appearing on behalf of Southern Marketing Agency, Inc. (SMA) and Dairy Cooperative Marketing Association, Inc. (DCMA) testified in support of Proposal 3. SMA and DCMA are marketing agencies-in-common operating in the southeast region of the country. Members of SMA include Arkansas Dairy Cooperative Association; Dairy Farmers of America, Inc.; Dairymen's Marketing Cooperative, Inc.; Lone Star Milk Producers, Inc.; and Maryland & Virginia Milk Cooperative Association, Inc. Members of DCMA include Zia Milk Producers Association; Select Milk Producers Association; Cooperative Milk Producers Association, Inc.; and Southeast Milk, Inc. Dairylea Cooperative, Inc. also requested that the witness testify on their behalf and in support of Proposal 3.

The SMA witness testified that the southeastern region of the United States is experiencing declining milk production while the population and demand for fluid milk are increasing. As a result, the witness stated that the Appalachian and Southeast marketing areas must continually seek supplemental supplies of milk from outside their normal milksheds. The witness added that the volume of supplemental milk needed to meet demands that cannot be met by local production, and the distances from where the supplemental milk is obtained continues to increase. The witness explained that these marketing conditions result in payments to handlers from the transportation credit balancing funds being depleted at a rate faster than the rate they are assessed.

The SMA witness presented monthly fuel cost data for the United States and nine U.S. sub-regions from the Energy Information Administration of the United States Department of Energy (EIA). Relying on EIA data, the witness asserted that the cost of diesel fuel has escalated sharply in recent years. According to the witness, the national average diesel fuel price in mid-1997 was reported to be approximately $1.15 to $1.17 per gallon while the national average diesel fuel price in mid-2005 was reported to be $2.20 to $2.50 per gallon. The witness emphasized that these current diesel fuel prices are much higher than the prices that existed when the transportation credit provisions were first implemented in 1996 and amended in 1997.

The SMA witness noted that the cost of hauling has also increased in recent years. Relying on EIA data, the SMA witness estimated the cost of hauling to be in the range of $1.75 to $1.80 per loaded mile in 1997, whereas the cost in 2005 was about $2.35 per loaded mile. As diesel fuel costs have increased, the witness explained, so have other costs such as equipment, insurance and labor.

The SMA witness emphasized that there have been no adjustments made to the MRF of the transportation credit provisions since they were last amended in 1997. The witness recounted that the original mileage rate was reduced by five percent, from 0.37 cents per cwt per mile to 0.35 cents per cwt per mile in 1997.

The SMA witness explained that in 1997, approximately 94 to 95 percent of the transportation costs on supplemental milk were covered by transportation credit balancing fund payments. The witness reiterated that since no adjustments have been made to the orders' transportation credit reimbursement rate since 1997, the percentage of hauling costs covered by the transportation credits today are substantially less than those in 1997.

According to the SMA witness, the current use of a fixed mileage rate is not responsive to changes in hauling costs. The witness explained that Proposal 3 would compute a variable transportation credit mileage rate per cwt per mile that would adjust with changes in the cost of diesel fuel. The witness stressed the importance and need to keep information on hauling costs current by using independent fuel cost data. The witness stated that hauling cost rates, adjusted for changes in fuel costs, are common in industry.

The SMA witness illustrated components used to calculate the proposed variable MRF. According to the witness, a monthly average diesel fuel price, a reference diesel fuel price, an average mile-per-gallon truck fuel use, a reference hauling cost per loaded mile and a reference load size are the components needed to calculate the proposed variable MRF.

Using EIA data for the United States and nine U.S. sub-regions, the SMA witness explained that using the Lower Atlantic and Gulf Coast EIA regions in computing the monthly mileage rates would be reflective of the Appalachian and Southeast marketing areas. Relying on EIA data, the witness explained that the Lower Atlantic region is comprised of the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia and Florida. Similarly, the witness added, the Gulf Coast region is comprised of Alabama, Mississippi, Arkansas, Louisiana, Texas and New Mexico. According to the witness, of the nine sub-regions described by the EIA, the Lower Atlantic and Gulf Coast regions best reflect the Appalachian and Southeast marketing areas geographically. The witness also noted that according to EIA data, the diesel fuel costs for these two regions are among the lowest reported nationally.

In establishing a reference diesel fuel price for the proposed transportation credit mileage rate calculation, the SMA witness relied on EIA retail diesel fuel prices for the time period of October to November 2003. During that period, the witness said, diesel fuel prices averaged $1.48 per gallon nationally and ranged from $1.42 per gallon in the Lower Atlantic to $1.43 per gallon in the Gulf Coast EIA regions. Due to the relatively little fluctuation of diesel fuel prices during October to November 2003, the witness was of the opinion that this period is a fair and conservative timeframe on which to establish a reference diesel fuel price. The witness concluded by suggesting $1.42 per cwt per mile should be used as the reference diesel price.

The SMA witness submitted a random selection of actual milk hauler bills as the basis for computing a reference hauling cost component of the proposed MRF. According to the witness, actual origination and destination points, miles moved, and rates and fuel surcharges per loaded mile were depicted on each hauling bill. For the month of October 2005, the witness stated that hauling costs ranged from $1.89 to $2.70 per loaded mile, with the average being $2.48 per loaded mile. In order to be consistent with the timeframe used for the reference diesel price, the witness submitted selected milk hauling bills from October to November 2003 as the basis for determining the reference hauling cost. The witness testified that for this time period the simple average hauling rate charged per loaded mile in the Southeast was $1.9332 and $1.8913, respectively, and averaged $1.9122. Accordingly, the witness offered that the average hauling rate of $1.91 per loaded mile become the reference hauling cost used in calculating the MRF.

The SMA witness provided data compiled by the United States Department of Transportation (USDOT) on combination truck fuel economy. According to the witness, the USDOT data show that the average miles traveled per gallon for a combination truck in 2002 was 5.2 miles per gallon. The witness was of the opinion that the dairy industry fuel economy is similar as it ranges between 5.0 to 6.0 miles per gallon. Accordingly, the witness advocated using a 5.5 miles per gallon fuel consumption rate in computing the proposed MRF. The witness also testified that a 5,600 gallon tanker at its fullest can carry 48,160 pounds of milk. Therefore, the witness explained, 48,000 should be the reference load size used in calculating the MRF.

The SMA witness summarized that Proposal 3 calculates a variable monthly MRF by using: (1) EIA data from a base period defined as October and November 2003, (2) hauling cost of $1.91 per loaded mile, (3) a reference diesel fuel rate of $1.42 per gallon, (4) a fuel economy of 5.5 miles per gallon and (5) a load size of 48,000 pounds.

The SMA witness explained that the proposed mileage rate would be calculated by averaging the four most recent weeks of retail on-highway diesel prices for both the Lower Atlantic and Gulf Coast, as reported by the EIA that are available prior to each order's announcement of the Advance Class milk prices. According to the witness, the proposed mileage rate would then be computed and included in each orders' announcement of Advanced Class milk prices that are announced publicly on the Friday on or before the 23rd of the current month.

The SMA witness stressed that the proposed mileage rate computation reflects less than the actual cost of hauling for various reasons. The witness asserted that the proposed mileage rate is based on costs of hauling from 2003, rather than a more current timeframe, and therefore would only reflect changes in the cost of diesel fuel since that time. The witness also reiterated that the proposed mileage rates would only apply to milk used in Class I shipped directly from farms to plants that exceeds 85 miles. The SMA witness was of the opinion that transportation costs will continue to increase and that adopting the proposed changes to the transportation credit provisions will avoid exhausting the transportation credit balancing fund before costs are reimbursed.

The SMA witness asserted that they were incurring substantial losses in supplying supplemental milk for Class I use to the Appalachian and Southeast marketing areas. The witness indicated that hauling costs in supplying supplemental milk reach over $15 million annually.

Six DFA farmer-members testified in support of Proposal 3. According to these witnesses, it is the cooperative members of SMA who are acting as handlers to supply the supplemental fluid milk needs of both marketing areas. According to the witnesses, this results in additional costs that are absorbed by the dairy farmer members of the cooperatives that comprise SMA. The witnesses argued that hauling costs and the distance supplemental milk must be hauled continues to increase.

The six DFA dairy farmer witnesses were of the opinion that Proposal 3 is a reasonable solution to deal with the continued production decline and population driven demand increase in the southeastern region of the United States. The witnesses were of the opinion that using a fuel adjustor that moves up and down with changes in the cost of diesel fuel would more adequately cover the costs of transporting supplemental milk in the marketing areas.

A post-hearing brief submitted by DFA, and supported by SMA, reiterated support for adopting a fuel cost adjustor.

A post-hearing brief was submitted on behalf of Arkansas Dairy Cooperative Association (ADCA) in support of Proposal 3. According to ADCA, their members' milk does not usually qualify for transportation credit payments because their milk is typically pooled on the Southeast and Central orders year-round. However, ADCA noted that their members are impacted by the cost of hauling supplemental milk into the southeast because of their membership in a marketing agency-in-common.

A post-hearing brief was submitted on behalf of Dairymen's Marketing Cooperative, Inc. (DMCI) in support of Proposal 3. The brief emphasized that as fuel costs continue to increase, the Class I differential surface becomes more outdated and unable to reflect the costs of moving milk.

A post-hearing brief was submitted on behalf of Lone Star Milk Producers (Lone Star) in support of Proposal 3 because it would establish updated mileage rates for making payments from the transportation credit balancing funds. The brief stated that the hauling cost factor used to develop the mileage rate for the transportation credit balancing fund has not been updated since the mid 1990's and is inadequate.

A post-hearing brief submitted by Maryland & Virginia Milk Producers Cooperative Association, Inc. (Maryland & Virginia) reiterated support for the adoption of Proposal 3.

A post-hearing brief was submitted on behalf of South East Dairy Farmers Association (SEDFA). The brief expressed support for a variable mileage rate based on the changes in the cost of diesel fuel. The brief stated that the industry uses a consistent fuel economy estimate of 5.0 to 6.0 miles per gallon when calculating expected milk transportation costs. The brief stressed that the extreme rise in diesel fuel prices in recent months has made the adoption of Proposal 3 critical for producers who incur the cost of hauling milk to the market.

A dairy farmer who supplies milk to Dean Foods Company (Dean) testified in support of the intent of Proposal 3. The witness stated that a dynamic mileage rate that adjusts to the energy markets is better than a static factor that is unable to change with changes in energy costs.

A dairy farmer who markets milk to Dean through Dairy Marketing Service (DMS) testified in favor of Proposal 3. The witness stated that using a variable MRF derived from a source outside of the dairy industry such as the USDOT would help decrease the chances of industry manipulating what information should be used in calculating a MRF.

A witness appearing on behalf of Southeast Milk, Inc. (SMI) testified in support of Proposal 3. SMI is a dairy marketing cooperative with approximately 300 dairy farmer members in Florida, Georgia, Alabama and Tennessee. The SMI witness stated

that relying on cost indexes of other government agencies determined on a national scale makes the data less subject to manipulation by any given industry.

A witness testified on behalf of Dean in support of Proposal 3. According to the witness Dean owns and operates 8 plants regulated by the Appalachian marketing area and 10 plants regulated by the Southeast marketing area. The Dean witness agreed with the benefit of using an adjustor in determining the MRF to reflect changes in fuel prices over time. However, the witness also was of the opinion that the MRF should be reduced by 95 percent in order to be consistent with the Secretary's past decisions that transportation credits do not encourage the uneconomic movement of milk or inefficiencies.

The Dean witness testified that there is a need for supplemental supplies of milk for the marketing areas and that supplying such milk presents challenges. Nevertheless, the witness was of the opinion and expressed concern for the continuing and potential abuse of transportation credits. The witness asserted that current order provisions allow supplemental milk to receive transportation credits when such milk is not demanded. Moreover, the witness stressed that there is no assurance that transportation credit balancing fund payments would flow to the dairy farmer members of the cooperatives acting as handlers located in the two marketing areas regardless of their status as independent or cooperative members.

A post-hearing brief submitted on behalf of Dean reiterated support for Proposal 3, indicating that disorderly marketing conditions exist because the milk supply in the Southeastern United States is deficit and the cost of supplying the market is not borne equally.

A witness appearing on behalf of Land O'Lakes, Inc. (LOL) testified in support of Proposal 3. LOL is a dairy cooperative with over 4,000 dairy farmer member-owners who are pooled on six Federal Orders. The witness stated that their member's milk located in the Northeast and Midwest have provided supplemental supplies to both the Appalachian and Southeast marketing orders for the past 10 years.

According to the witness, LOL is a continuous supplemental milk supplier to the Appalachian and Southeast orders and has higher costs hauling milk. The witness asserted that basing the MRF on changes in diesel fuel prices would be responsive to costs actually experienced by the handlers who move milk into these two deficit markets.

A post-hearing brief submitted by LOL reiterated support for the adoption of Proposal 3. The brief said that in order to fulfill the supplemental milk needs of the two marketing areas, milk is sourced from 28 states, which demonstrates the distance milk must travel has further increased adding to the justification of why Proposal 3 should be adopted.

An independent dairy farmer from New Market, Tennessee, testified in opposition to any changes to the Appalachian or Southeast marketing orders. The witness testified that additional government intervention in moving milk was not necessary and that supply and demand should be relied upon to dictate what services are needed. The witness asserted that amending the orders as proposed would change the way milk is moved and that would hinder efficient milk hauling. The witness also was of the opinion that there is no assurance transportation credits received for supplying supplemental milk would truly reach the market's producers. The witness expressed concerns that the proposed increases in the transportation credit rate could affect producer decisions and producer blend prices.

A witness testified on behalf of the Kentucky Dairy Development Council (KDDC). KDDC is a member-based organization that represents approximately 1,360 dairy farmers in Kentucky. KDDC did not state support or opposition for the proposals presented at the hearing. The witness was of the opinion that noncompetitive pricing is discouraging milk production in the southeastern United States. The witness stated the opinion that farm milk prices in Kentucky and in the Southeastern states have eroded and that KDDC was opposed to any Federal Order changes which would further erode farm prices. The witness did testify in support of changes to the orders that would strengthen the position of dairy farmers in Kentucky and in other Southeastern states.

A post-hearing brief was submitted by KDDC in support of Proposal 3 even though no specific position was taken on proposals considered during the hearing. The brief said that Proposal 3 would benefit Kentucky dairy farmers by providing assistance in recovering market service costs.

B. Increasing the Maximum Assessment Rate

A proposal, published in the hearing notice as Proposal 1, offered by DFA, that seeks to increase the maximum transportation credit balancing fund assessment rates for the Appalachian and Southeast orders should be adopted immediately. Specifically, this proposal would increase the maximum transportation credit balancing fund assessment rate in the Appalachian order by $0.055 per cwt on Class I milk so that the maximum rate of assessment would be $0.15 per cwt. The Southeast order maximum assessment rate would be increased by $0.10 per cwt so that the maximum rate of assessment would be $0.20 per cwt.

A witness appearing on behalf of DCMA and SMA testified in support of Proposal 1. As previously described in testimony regarding Proposal 3, the SMA witness said that the current transportation credit provisions provide for collecting a maximum transportation credit assessment to handlers on all Class I milk for the Appalachian and Southeast marketing areas year-round. While the Market Administrator has the discretion to waive the maximum transportation credit assessments if deemed necessary, the SMA witness explained that the Market Administrator of each order collected the maximum assessments in 2004 and 2005. However, the witness said that the collected assessments in both orders had been insufficient to pay the requested credits necessitating the proration of payments from the transportation credit balancing fund.

The SMA witness stated that even with the November 1, 2005, implementation of the most recent transportation credit assessment increase of 3 cents per cwt for both orders, the assessment rate will likely not be able to ensure payments from the transportation credit balancing funds on all milk eligible to receive payment.

The SMA witness estimated that the transportation credit assessment rate for the Appalachian order for 2004 would have needed to be $0.0889 per cwt and $0.0953 per cwt for all of 2005 in order to cover all of the transportation credits requested. The witness also estimated that the Southeast area transportation credit assessment rate would needed to have been $0.1318 per cwt and $0.1246 per cwt in 2004 and 2005, respectively, to cover all requested credits. The witness also noted that the transportation credits requested for both the Appalachian and Southeast marketing orders for the months of July, September and October of 2005 exceeded the transportation credits requested in all of 2004. The witness said that this also demonstrates that increased volumes of supplemental milk were transported from locations located farther from the marketing areas.

The witness said that the reason the Market Administrators' prorated

payments from the transportation credit balancing funds was because the rate of assessments exceeded collections. The witness was of the opinion that this occurred because more supplemental milk was sourced from more distant locations.

Relying on Market Administrator data, the witness concluded that only 55 percent of the actual cost of transporting supplemental milk was covered by the transportation credit payments in the Appalachian Order and only 39 percent of the actual cost was covered for the Southeast Order in 2004. The witness estimated that for 2005, only 53 percent and 43 percent of the actual hauling costs for supplemental milk would be covered for the Appalachian and Southeast orders respectively.

In explaining the need for the adoption of Proposal 3, the SMA witness reiterated that the combined effect of higher mileage hauling rates and supplemental milk being hauled from more distant locations resulted in a smaller portion of actual transportation costs being funded with transportation credits than in 1997. The witness was of the opinion that transportation costs will continue to increase thus making it necessary to again increase the assessment rate.

Further illustrating the need to increase the maximum transportation credit assessment rate, the SMA witness related that if a transportation credit reimbursement rate of 0.46 cents per cwt per mile had been in place rather than the current rate of 0.35 cents per cwt per mile, the Appalachian order would have required an assessment of $0.133 per cwt in 2004 in order to prevent the proration of transportation credit claims, and 2005 would have required an assessment of $0.1415 per cwt. Similarly, the witness stated for the Southeast order, the assessment rate would have needed to have been $0.1927 per cwt for 2004 and $0.1869 per cwt for 2005.

The SMA witness testified that the differing rates of transportation credit balancing fund assessments proposed for the Appalachian and Southeast orders reflect the differing costs of supplying supplemental milk into each marketing area. The witness stated that while the transportation credit assessment was waived for 2 months during 2002 and 2003, assessments were not waived for the Southeast order. The witness asserted that while both orders rely on some of the same sources for supplemental milk, the Appalachian marketing area receives most of its milk from the more northern Mid-Atlantic States while the Southeast marketing area receives most of its supplemental milk from States located to the west and southwest of the marketing area. Further, the witness added that different assessment rates are warranted for the two orders because supplemental milk moves greater distances to service the Southeast market than it does to service the Appalachian market.

The six DFA dairy farmer witnesses that testified in support of Proposal 3 also testified in support for increasing the transportation credit assessments for both orders. The witnesses were of the opinion that the assessment increases would generate funds needed to maintain a sufficient transportation credit fund balance to pay eligible claims. In addition, the witnesses were of the opinion that the orders' current location adjustments are not able to reflect the rapidly increasing costs of transporting milk from where it is located to where it is needed. Similarly, the witnesses stated that over-order premiums cannot be commanded from the market to offset rapidly increasing transportation costs.

The six DFA dairy farmer witnesses were also of the opinion that the intent of increasing the transportation credit assessment rates was a reasonable solution to mitigate continued production declines and the increasing demand for milk in the southeastern United States by a growing population. The witnesses added that higher fuel costs and longer hauling distances from which to obtain supplemental milk supplies are costing the markets' producers. When producers go out of business, the witnesses related, the gap between supply and demand widens thereby increasing the cost of supplying the market with supplemental milk.

Post-hearing briefs submitted by DFA reiterated the position and testimony by SMA in support of increasing the transportation credit assessment rates immediately.

A post-hearing brief was submitted on behalf of Select Milk Producers, Inc. (Select) and Continental Dairy Products, Inc. (Continental) in support of Proposal 1. Select's members are located in New Mexico, Texas, Kansas and Oklahoma, and Continental's members are located in Indiana, Michigan and Ohio. The brief stated that both cooperatives supply the Appalachian and Southeast marketing areas with supplemental milk. The brief stated support for testimony given at the hearing by proponents for increasing the transportation credit assessment rates of the two orders. The brief also stated that while the proposals under consideration will not fix long-term marketing and transportation problems, Proposal 1 should be adopted in conjunction with the Department considering alternative approaches in an effort to correct the milk deficit problems in the southeast region of the United States.

The Select/Continental brief expressed the opinion that blend prices, not Class I prices, provide the economic incentive to supply milk to a marketing area. The brief stated that when producers in a large marketing area share the same blend price the incentive to move milk within the large marketing area is greatly diminished. In addition, the brief indicated that the pricing of diverted milk ignores the true relative value of milk to the market where pooled which results in milk being pooled that is not available to meet the Class I needs of the market.

A post-hearing brief was submitted on behalf of South East Dairy Farmers Association (SEDFA). The brief expressed support for Proposal 1 as published in the hearing notice. SEDFA represents cooperative and independent producers who are normal and supplemental milk suppliers and are located in and outside of the Appalachian and Southeast marketing areas.

The SEDFA brief asserted that whether milk is produced within or outside of the two marketing areas, the cost of moving Class I supplemental milk should be borne by the marketplace. The brief stated that while the percent reimbursement of actual hauling costs is much lower than in 1997, the amount of supplemental milk being brought into the marketing areas is increasing. The brief concluded that because reimbursement of actual hauling cost is smaller, the higher costs not reimbursed has fallen disproportionately to producers. The brief agreed with Lone Star and Maryland & Virginia that the 3-cent increase in the transportation credit assessments implemented in November 2005 would be insufficient to cover expected transportation credit claims during 2006.

A witness appearing on behalf of DFA testified in support of Proposal 1. The witness testified that the pay prices for cooperative producers in the southeast region of the country (Tennessee, Louisiana, Missouri, Virginia, North Carolina, South Carolina and Alabama) between January through June 2005 for DFA cooperative members ranged from $0.25 per cwt below the blend price to $0.30 per cwt above the blend price with the majority being at about $0.20 per cwt above the blend price. The witness indicated that over-order premiums paid to producers ranged from $0.10 to $0.90 per cwt above the blend price and were similar to the pay

price of their competitors in these areas who are not DFA members.

A witness appearing on behalf of LOL testified in support of Proposal 1. The LOL witness agreed with other proponents that the transportation credit balancing fund for both orders has been insufficient to support transportation credit payments. While the witness supported the transportation credit assessment increases effective in November 2005, the witness did not think that this would be sufficient to reimburse future claims.

A post-hearing brief submitted by LOL reiterated their support for the adoption of Proposal 1. The brief indicated that the southeast region of the country is not able to fulfill Class I demands during any season of the year and must rely on supplemental supply from about 28 States outside the Appalachian and Southeast marketing areas. The brief noted that transportation credits installed in the southeastern region in 1996 were based on recognition that the region's Class I needs could only be met by supplemental milk from dairy farms located outside of the region.

A witness testifying on behalf of Dean expressed cautious support for increasing the transportation credit assessment rates of the two orders because the availability of additional credits needs to be balanced with a consideration for abuses and undesired results. The witness was of the opinion that handlers who receive such credits also are pooling milk on the orders through the diversion process that does not actually serve the market's Class I needs.

A post-hearing brief submitted on behalf of Dean agreed with proponents of Proposal 1 that disorderly marketing conditions exist. The brief stated that the southeast area's milk supply is deficit and the cost of supplying the market is not borne equally.

A witness testified on behalf of SMI in opposition to Proposal 1. The witness characterized transportation credits as a subsidy and was of the opinion that subsidizing the transportation of milk produced outside of the marketing areas results in economic disincentives for local milk production and incentives for milk from outside the two marketing areas to replace local supplies. The witness noted that when transportation credits were first adopted in 1996, the average Class I utilization of the southeast region was in the mid-80 percent range. Since the implementation of transportation credits, the witness contrasted the Class I utilization noting that it had fallen to the 60 percent range. It was the opinion of the witness that transportation credit provisions are contributing to the declining milk production in the two marketing areas.

The SMI witness testified that transportation credits should be eliminated. As an alternative, the witness suggested (1) establishing a method by which Class I prices could be adjusted based on more regional marketing conditions, (2) adopting a base-excess plan, (3) increasing the current Class I differential level and (4) any other provisions that would encourage local milk production.

A Kentucky dairy farmer testified in opposition to Proposal 1. The witness argued that providing transportation credits devalues local milk, results in lower prices to local producers, and is a cause of the declining milk production in the two marketing areas. The witness expressed concern that Proposal 1 will provide for more milk located outside the marketing areas the opportunity to be pooled on the orders even though that milk is not delivered to either marketing area on a daily basis as is the locally produced milk. According to the witness, local producers are not able to receive the full value for local production because transportation credits give producers located far from the marketing areas price advantages. The witness concluded by stating that pooling milk located outside of both marketing areas does not represent Class I use and this milk should not be pooled on the Appalachian or Southeast orders.

A dairy farmer witness who supplies milk to Dean testified in opposition to Proposal 1. The witness viewed increasing assessment rates on transportation credits as detrimental to dairy farmers located in the Appalachian and Southeast marketing areas who regularly supply the Class I needs of the market. The witness was of the opinion that Proposal 1 lacks safeguards on the amount of additional milk that could be pooled on the orders by diversions. The witness said this additional pooled milk would unnecessarily lower the blend price received by producers and essentially result in out-of-area milk supplies becoming less expensive relative to milk produced in-area. As a consequence, the witness said local in-area producers will be forced out of business because of lower prices thereby further increasing the need for additional out-of-area supplemental milk supplies to meet the Class I needs of the marketing areas.

The witness suggested that instead of providing additional transportation credits, a review of the level of Class I differentials and a review of diversions and touch-base provisions should be considered in another hearing.

An independent dairy farmer from New Market, Tennessee, testified against making any changes to the Appalachian and Southeast marketing orders including the adoption of Proposal 1. In addition to the witness' testimony regarding Proposal 3 already described, the witness was of the opinion that additional government intervention to provide for the increasing transportation credit assessment rate was not necessary and that supply and demand forces should dictate what services are needed. The witness asserted that amending the orders as proposed would change the way milk is transported and would hinder efficient handling of milk. The witness was of the opinion that there would be no assurance that the transportation credits would benefit the producers who were pooled on the two orders and incurred the additional costs of servicing the Class I market.

A dairy farmer who also markets milk to Dean through DMS testified in opposition to Proposal 1. The witness said that local producers of the Appalachian and Southeast marketing areas are unable to supply all the fluid milk needs of the two marketing areas because local milk production in these areas is declining. The witness suggested that if Proposal 1 were adopted, the accounting of the total transportation costs of all milk movements should be supplied to the Market Administrators and be made available for public inspection. The witness also suggested making changes to the level of adjustments of milk prices by location (location adjustments) as an alternative to increasing the transportation credit assessment rate. The witness said if location adjustments were changed, the pooling standards for both orders would also need to be adjusted. Specifically, the witness suggested increasing the number of days' production needed to touch base or increasing the performance standards of the orders.

A post-hearing brief submitted by the Kentucky Dairy Development Council (KDDC) supported Proposal 1 even though they did not state their position at the hearing. The brief noted that increasing the transportation credit assessment rate would benefit Kentucky dairy farmers by providing assistance in recovering costs associated with serving the market.

C. Establishing Diversion Limit Standards

A proposal submitted by Dean Foods, published in the hearing notice as Proposal 4, seeks to reduce a handler's ability to utilize transportation credits to

help broaden the number of producers who touch base. The intent of the proposal is to limit the pooling of additional surplus milk on the orders through the diversion process. Currently, large volumes of milk are being pooled through diversions on the Appalachian and Southeast orders from locations distant from the marketing areas. While Proposal 4 would provide incentives to limit the pooling of milk through the diversion process, it would do so indirectly by limiting the payment of transportation credits. This decision chooses to directly limit diversions by establishing a zero diversion limit on milk that receives transportation credits.

A witness appearing on behalf of Dean testified in support of Proposal 4 while also expressing cautious support for the proposed transportation credit assessment increase (Proposal 1). The witness was of the opinion that handlers supplying supplemental milk to the two marketing areas receive a financial benefit from pooling diverted milk on the orders but maintained that such milk does not serve the fluid market. The witness explained that while the diverted milk typically does not serve the two markets, it is nevertheless pooled on the two orders because the blend prices are higher than what this milk could receive if pooled on other Federal orders.

The Dean witness testified that the establishment of large marketing orders has created new marketing problems. According to the witness, when the Federal order system had a larger number of smaller markets, each order's marketwide pools were small. Markets with large populations relative to associated milk, the witness explained, had higher Class I utilizations and higher blend prices to attract supplemental milk supplies. Markets with significant supplies of milk and smaller populations, the witness related, had lower Class I utilizations and producers pooled in those markets were provided with the economic incentive to look for higher returns in markets with higher blend prices. The witness further explained that smaller marketing areas limited the size of the Class I market and in turn limited how much milk could be pooled by diversion. The witness said that not only were smaller orders effective in limiting a handler's ability to pool milk through diversions, but smaller orders also had disincentives to pooling diverted milk. According to the witness, the relative value of diverted milk was tied to its distance from the market.

The Dean witness also testified that the Class I price surface adopted during Federal milk order reform changed the relative relationship of milk value to its distance from the market. According to the witness, the location value of diverted milk prior to reform was based on adjusting milk value based on the distance to an order's pricing point. The witness said this resulted in each plant having a different location adjustment value to its milk receipts depending on the order on which its receipts were pooled. The witness explained that the further milk was located from the order's pricing point, the less likely that such milk would be pooled as diversions.

The Dean witness expressed concern that no longer valuing milk relative to the order on which it is pooled had a material effect on the value of pooling milk located far from the market by diversion. The witness was of the opinion that the flatter Class I price surface, with fixed differential levels by county, places a value on milk that is not reflective of its value to the marketing order where pooled and has made it economically desirable to pool milk located far from the market by the diversion process. The witness was also of the opinion that this served to provide the incentive for pooling distant milk by diversions.

The Dean witness testified that even though there are closer milk supplies, distant milk is being pooled on both orders and asserted that transportation credits amplify the pooling of milk on the orders which does not service the Class I needs of the markets. The witness was of the opinion that pooling distant milk by diversions are clearly disorderly marketing conditions for the two markets. According to the witness, when such milk is pooled, local farmers who are consistently serving the Class I needs of the markets receive a needlessly lower blend price.

According to the Dean witness, the objective of Proposal 4 is to modify the receipt of transportation credits depending on a handler's specific service to the Class I need of the markets and to lower the payment of transportation credits to those handlers who have higher levels of diversions. The witness stated that the current reimbursement rate of transportation credits is the same for each handler regardless of the level of its relative service to the fluid market. The witness explained that when a handler delivers 100 percent of its receipts to a pool distributing plant, it receives transportation credits at the same rate as a handler delivering only the minimum volume needed to meet the pooling qualifications. The witness related that the handlers only meeting the minimum pooling standards are then able to divert milk which is not available to the market. Additionally, the witness indicated that adjusting a handler's receipt of transportation credits in this way will maintain and help extend the transportation credit balancing funds.

The Dean witness acknowledged the need for balancing because distributing plants do not typically need to receive milk every day of the week. However, the witness asserted that not limiting diversions undermines the purpose of the Federal order system. The witness explained that their proposed 30 percent diversion limit on supplemental milk seeking transportation credits was reasonable because a distributing plant typically receives milk for five days per week. The need to divert milk for two days per week, the witness explained, justifies the 30 percent diversion limit. The Dean witness explained that based on data provided by the Market Administrator, there are handlers in both orders who receive transportation credits and who divert significantly more pounds of milk than the orders need to balance the Class I demands of pool distributing plants.

A post-hearing brief submitted on behalf of Dean reiterated support for the adoption of Proposal 4 provided that Proposals 1 and 3 are adopted. The brief stated that Proposal 4, when adopted with Proposals 1 and 3, would tend to limit the abuse of transportation credits on supplemental milk for Class I use because Proposal 4 sets a cap on the receipt of transportation credits by handlers. The brief also stressed that the adoption of Proposal 4 would exercise some control over how much milk would be pooled on the orders through the diversion process.

A dairy farmer who supplies milk to Dean testified in support of Proposal 4. The witness agreed with Dean and other opponents that orders should only pool the milk of producers who truly serve the Class I needs of the market; otherwise revenue essentially leaves the two marketing areas. According to the witness, this loss of revenue leads to the area's dairy farmers exiting the industry and further reduces the availability of local milk supplies. The witness said that the result is the need for acquiring more milk produced from far outside the marketing areas. The witness was of the opinion that it is the shipments of supplemental milk into the marketing areas that provide the ability to pool milk by diversion when it is not available to the market.

A witness from SMI testified in support of Proposal 4 provided Proposals 1 and 3 are adopted.

A Kentucky dairy producer testified in support of Proposal 4 and said that

supplemental milk receiving transportation credits should have some limits on the amount of additional milk that can be pooled by diversions. The witness was of the opinion that transportation credits give producers located outside the marketing areas a price advantage because their diverted milk receives the blend price of the orders.

A witness appearing on behalf of LOL testified in opposition to Proposal 4. The witness noted that transportation credits were established to attract supplemental milk and to partially offset the cost of hauling supplemental milk into the deficit markets. The witness explained that the orders' specify conditions that must be met for being eligible to receive transportation credit payments. The current transportation credit provisions, the witness said, already limit payments for supplemental milk from outside the marketing areas to the milk of dairy farmers who are not defined as "producers" under the orders. The witness also said that payments are limited to Class I pounds and are not made on the first 85 miles of hauling milk from farms to the plant that receives supplemental milk.

The LOL witness stressed that additional limitations would do nothing to encourage the delivery of needed supplemental milk into the marketing areas during the short production months. The witness was of the opinion that if the intent is to change the diversion limits of the orders, those changes should be addressed in a separate hearing.

A post-hearing brief submitted by LOL reiterated opposition to Proposal 4. The brief reiterated the positions given at the hearing. The brief also stated that Proposal 4 improperly assumes that all handlers supplying supplemental milk have equal access to distributing plants and that distributing plants Class I use of milk is the same as the Class I utilization of the two markets.

A witness appearing on behalf of SMA also testified in opposition to Proposal 4. The SMA witness stated that there is some rational basis for the intent limiting transportation credits to a handler who diverts more milk to nonpool plants above reasonable levels. However, the witness was of the opinion that it is the touch-base and diversion limit standards of the orders that already provide sufficient safeguards to pooling milk not needed for Class I use. According to the witness, adoption of the proposal would disproportionately place burdens on market participants.

The SMA witness explained that it is difficult to establish specific diversion limits on supplemental milk as contained in Proposal 4 because of individual differences in the balancing needs of each distributing plant, noting that these needs continually change. The witness emphasized that there are difficulties in balancing pool distributing plants of the orders year-round and suppliers sometimes have no control over factors that may alter balancing needs. The witness noted that some of SMA's purchase agreements for supplemental milk included arrangements where transportation credit payments are paid directly to the cooperative acting as the supplier. In this regard, the witness expressed concern that providing a separate diversion limit on milk receiving transportation credit payments would unfairly penalize them when a distributing plant overestimates its need for supplemental milk. The witness stated that extreme variations in daily, weekly and monthly deliveries to pool distributing plants occur. Relying on Market Administrator data for January 2004 through October 2005 that showed the ratio of the highest delivery day to the lowest delivery, the witness concluded that a 30 percent reserve factor would not have been sufficient to cover distributing plant balancing needs.

The SMA witness also was of the opinion that Proposal 4 would give an advantage to pool distributing plant operators to the detriment of cooperatives who in their capacity as handlers are supplying supplemental milk. The witness said that while cooperatives handle the majority of supplemental milk for the orders, they may receive little or no transportation credit payments under Proposal 4. According to the witness, a diversion limit could only benefit handlers located nearer to the marketing areas.

A post-hearing brief was submitted on behalf of ADCA in opposition to Proposal 4. The brief stressed that the seasonality of production in the southeastern region is the highest in the country and means that a greater reserve of milk must be assured. The brief concluded that Proposal 4 would create inequities between handlers supplying supplemental milk and encourage uneconomic movements of milk.

A post-hearing brief was submitted on behalf of DMCI in opposition to Proposal 4. The brief asserted that there are too many unanswered questions about how Proposal 4 would be applied. The brief stated that a distributing plant's reserve milk needs are an individual business decision and should only be limited by the order's pooling provisions.

A post-hearing brief submitted by DFA and other SMA members reiterated their opposition to Proposal 4. The brief noted that there are many months when a 30 percent diversion limit is insufficient to cover balancing needs. Therefore, if Proposal 4 were implemented, the brief said, it could disproportionately affect different supplemental supplies and distributing plants in the marketing areas.

A post-hearing brief was submitted on behalf of Lone Star in opposition to Proposal 4. The brief opposed the adoption of Proposal 4 because it would establish a "one-size-fits-all" or single diversion limit for all Class I handlers. The brief noted that a distributing plant's reserve milk needs are individual decisions of the plant in response to its customer base and seasonal changes in demand. The brief was of the opinion that the orders already provide diversion limit standards and touch-base requirements that are some of the strictest in the Federal order system.

Findings/Discussion

The issue before the Department in this decision is to consider changes to the transportation credit provisions of the Appalachian and Southeast milk marketing orders. Transportation credit provisions have been a feature of the current orders (and their predecessor orders) since 1996. The need for transportation credit provisions arose from a consistent need to import milk from considerable distances to the marketing areas during certain months of the year when milk local production in the areas was not sufficient to meet Class I demands. Transportation credit provisions provide payments to handlers to cover a portion of the costs of hauling supplemental milk supplies into the Appalachian and Southeast marketing areas during the months of July through December—a time period during which supplemental milk is needed to meet the demand for Class I milk at distributing plants.

The transportation credit provisions are designed to distinguish between producers who are supplying the markets on these orders from producers who are *not* supplying the markets on these orders. The milk of producers who are located outside of the marketing areas and who are not considered "producers" of the order are eligible to receive transportation credits.

The record reveals that the Appalachian and especially the Southeast marketing areas are chronically unable to meet Class I

demands. Local milk production relative to demand has declined and is expected to continue declining. Consequently, local milk production is not always able to fulfill the Class I needs of the markets which necessitates the need for supplemental milk from distant locations. As local milk production has eroded, the volume of supplemental milk needed for fluid use and the distance from the marketing areas that supplemental supplies are obtained has been increasing, especially for the Southeast marketing area. These combined factors have caused the transportation credit balancing fund (TCBF) to be insufficient in covering requested transportation credit payments in the past. The TCBF will likely not be able to cover future requested payments unless the amendments contained in the decision also are adopted.

While both marketing areas are able to supply the Class I needs of their respective markets during the spring "flush" months without the need for transportation credits, the record clearly indicates that both orders are not able to fully supply their fluid needs with local production during the last 6 months of the year. The chronic shortage of milk for fluid uses during this time period has worsened over time, especially in the Southeast marketing area. Evidence shows that the trend of declining production relative to demand will increase the need for supplemental milk supplies and is likely to continue into the foreseeable future.

Variable Mileage Rate Factor—a Fuel Cost Adjustor

Based on record evidence, this tentative partial decision finds that the MRF used to determine the payment of transportation credits should include a fuel cost adjustor as proposed in DFA's Proposal 3.

The original fixed mileage rate for both orders was 0.37 cents per cwt per mile when the transportation credit provisions were first established in 1996. The computation of the transportation credit payments was based on the total miles supplemental milk was shipped from its point of origination to its destination—the receiving pool distributing plant. In 1997, several amendments were made to the transportation credit provisions of the orders that included a reduction of the mileage rate from 0.37 cents per cwt per mile to the current 0.35 cents per cwt per mile.

Additional amendments made in 1997 to the transportation credit provisions included excluding the first 85 miles supplemental milk was hauled from farms in determining the total miles shipped. Additionally, the amendments eliminated the use of the producer settlement fund of the orders as a source of revenue for the payment of transportation credits on supplemental milk when the TCBF was unable to pay net transportation credit claims. No other amendments have been made to the MRF used in the transportation credit provisions since 1997.

Proposal 3 adjusts the MRF by changes in the cost of diesel fuel. Specifically, a monthly average diesel fuel price, a reference diesel fuel price, an average mile-per-gallon truck fuel use, a reference hauling cost per loaded mile and a reference load size are all component factors needed to determine the variable MRF to be used in the calculation of payments from the TCBF.

The EIA data for the United States and nine U.S. sub-regions are a reliable and reasonable data source to establish certain components needed for determining a variable MRF. The data are representative of diesel fuel prices in the Appalachian and Southeast marketing orders and can be relied upon as a basis to make adjustments to the MRF. Reliance on EIA data that is independent and unbiased will make determination of the MRF objective and uniformly applicable to all handlers.

Proposal 3 suggested the use of the Lower Atlantic and Gulf Coast EIA regions in the computation of monthly mileage rates for the Appalachian and Southeast orders is reasonable. The record reveals that not only do the Lower Atlantic and Gulf Coast regions best reflect the Appalachian and Southeast marketing areas geographically, but also that the diesel fuel prices for these two regions are among the lowest in the country. Hence, it is appropriate to utilize these geographic defined data sets in the mileage rate calculations.

The record reveals that fuel prices and other factors impacting hauling prices have increased greatly since the establishment of transportation credits. Specifically, the record indicates that current diesel fuel prices exceed those prices that prevailed when transportation credit provisions were first implemented in 1996 and amended in 1997. The national average diesel fuel prices in mid-1997 were reported to be approximately $1.15 to $1.17 per gallon, while the national average diesel fuel price in mid-2005 was reported to be $2.20 to $2.50 per gallon. Additionally, while diesel fuel prices have increased, all other costs impacting hauling costs also have increased. According to the record, EIA data indicates that the hauling costs ranged from $1.75 to $1.80 per loaded mile in 1997 to about $2.35 per loaded mile in January 2006. Establishing a reference diesel fuel price for the MRF calculation using the EIA retail diesel fuel prices from the time period of October to November 2003 is reasonable. According to the EIA data, national average diesel fuel costs during this period demonstrated price stability relative to any other time between 1997 and 2005.

From October to November 2003, national diesel fuel prices fluctuated by only 0.1 cents. Specifically, diesel fuel prices averaged $1.48125 per gallon in October 2003 and $1.48225 per gallon in November 2003. Similarly, the record shows that for both the Lower Atlantic and Gulf Coasts, diesel fuel prices ranged from $1.4210 to $1.43075 per gallon between October and November 2003. The stability of diesel fuel prices during October to November 2003 supports this time period as a reasonable point to use in determining a reference diesel fuel price. Therefore, the record supports using $1.42 per gallon as the reference diesel price in the MRF calculation.

Evidence submitted by SMA provides a basis for determining a reference average hauling cost per loaded mile as a component for determining the MRF. The evidence consisted of data randomly selected from actual hauler bills paid to cooperatives during October and November 2003 and for October and November 2005. The record supports utilizing hauling cost data from October and November 2003 as a basis for computing the reference hauling cost in the MRF consistent with the time frame used for the reference diesel price.

The randomly selected hauling bills depict actual origination and destination points of the milk hauled, miles traveled, and the rates and fuel surcharges per loaded mile for each bill. For the month of October 2005, the data indicate that hauling costs ranged from $1.89 to $2.70 per loaded mile, with an average cost of $2.48 per loaded mile. Data also show that the simple average hauling rate charged per loaded mile in the Southeast marketing area was $1.9332 and $1.8913 in October and November 2003, respectively, with a two-month simple average cost of $1.9122 per loaded mile. Therefore, it is reasonable to conclude that a reference hauling rate of $1.91 per loaded mile be used as a component in the MRF calculations.[1]

[1] It should be noted that as a result of the Emergency Hurricane hearing held for the Appalachian, Florida and Southeast marketing

Continued

Another component needed in the calculation of the MRF is the average number of miles traveled per gallon of fuel used in transporting milk. Data regularly maintained by the United States Department of Transportation on combination truck fuel economy indicates the average miles per gallon for a combination truck in 2002 was 5.2 miles per gallon and in 2003 was 5.1 miles per gallon. The record also reveals testimony that the dairy industry typically estimates fuel economy at between 5.0–6.0 miles per gallon. Therefore, because 5.5 miles per gallon is the median point and to promote efficiencies, the record finds that a 5.5-mile per gallon fuel consumption rate is reasonable and should be used to compute the MRF.

The record also supports using 48,000 pounds as a reasonable reference load size for determining the MRF. Data reveal that a 5,600 gallon tanker truck at its fullest capacity can carry 48,160 pounds of milk. Therefore, using 48,000 pounds as the reference load size component is appropriate for calculating the MRF.

Proposal 3 would calculate the MRF by averaging the four most recent weeks of weekly retail on-highway diesel prices for both the Lower Atlantic and Gulf Coast, as reported by the EIA. Record evidence supports announcing the monthly MRF at the same time as Advanced Class Prices on or before the 23rd of the current month. This way, handlers will know in advance the rate at which transportation credits will be paid.

Table 1 shows an example of the calculation of the MRF to be used in the transportation credit provisions:

TABLE 1.—EXAMPLE OF THE CALCULATION OF THE TRANSPORTATION CREDIT MILEAGE RATE FACTOR (MRF) FOR JULY 2006 [1]

EIA weekly retail on-highway diesel fuel prices [2]	Lower Atlantic	Gulf Coast
5/29/2006	2.815	2.798
6/5/2006	2.825	2.805
6/12/2006	2.866	2.848
6/19/2006	2.867	2.859

Monthly average diesel fuel price [3]	$2.835	per gallon
Reference diesel fuel price	− $1.420	per gallon
Fuel price difference [4]	$1.415	per gallon
Reference truck fuel use	÷ 5.5	miles per gallon
Fuel cost adjustment factor [5]	$0.257	per loaded mile
Reference haul cost	+ $1.910	per loaded mile
Fuel-adjustment haul cost [6]	$2.167	per loaded mile
Reference load size	÷ 48,000	pounds
July 2006 Mileage Rate Factor [7]	$0.00451	dollars per cwt per mile

[1] To have been announced on June 23, 2006, with the Announcement of Advanced Class Prices.
[2] Dollars per gallon. Reported every Monday by the Energy Information Administration of the U.S. Department of Energy.
[3] Calculated by rounding down to three decimal places the average of the four most recent weeks of retail on-highway diesel fuel prices for the Lower Atlantic and Gulf Coast EIA regions combined prior to the Advanced Class Price announcement.
[4] Calculated by subtracting the reference diesel fuel price of $1.42 per gallon from the calculated average diesel fuel price for the month.
[5] Calculated by dividing the fuel price difference by 5.5 miles per gallon fuel use and rounding down to three decimal places.
[6] Calculated by adding fuel cost adjustment factor for the month to the reference haul cost of $1.91 per loaded mile.
[7] Calculated by dividing the fuel-adjusted haul cost by the number of hundredweights (cwt's) on the reference load size (48,000 pounds = 480 cwt's) and rounding down to five decimal places.

Concern exists that relying on a variable MRF may result in reimbursing the total, rather than a portion, of the hauling costs on supplemental milk. In this regard, a variable MRF that is consistent and reflective of the original intent of the transportation credit provisions of the Appalachian and Southeast orders is necessary. As already discussed, approximately 94 to 95 percent of the total transportation costs on supplemental milk were covered by the TCBF payments for both orders in 1997. However, the record reveals that for 2005, 53 percent and 42 percent of the total transportation costs for the Appalachian and Southeast orders, respectively, were covered by TCBF payments.

It is not possible to predetermine the percent of the total transportation costs that will be reimbursed by TCBF payments due to a number of unknown variables. However, the transportation credit provisions already contain precautionary measures for how the MRF is calculated. The record indicates that reference diesel fuel prices and reference hauling costs per loaded mile are components of the mileage rate calculation and are based on 2003 data that are much more current than the data considered and adopted in 1997 establishing a fixed mileage rate. It should also be noted that the current and proposed mileage rate are used to reimburse only the pounds of Class I milk shipped, and not total producer milk shipped. This provides an important safeguard against paying excessive transportation credit payments. Finally, current transportation credit provisions do not include the first 85 miles that supplemental milk is shipped from farms in determining the total miles shipped. This feature also plays a part against safeguard to excessive transportation credit payments.

As discussed earlier in this decision, transportation credit provisions of the

orders during the fall of 2004, a reasonable haul rate used to determine how handlers would be compensated for the transportation costs of extraordinary movements of milk was established for a temporary time period. Specifically, a maximum of $2.25 per loaded mile hauling rate was established.

Appalachian and Southeast orders were originally established to partially offset the cost of transporting supplemental milk supplies into each marketing area to meet fluid milk demands. The transportation credit assessment rates have been increased twice in an effort to ensure that the TCBF would be sufficient to meet the expected claims. When first established for the Appalachian, Southeast and predecessor orders (Orders 5, 7, 11 and 46), the maximum transportation credit assessment charged to Class I handlers was $0.06 per cwt for each order. The first increase was adopted in 1997 by raising the maximum assessment by $0.005 per cwt for the Appalachian order and by $0.01 per cwt for the Southeast order. The second increase in the maximum assessment rates for both orders became effective in November 2005. The maximum assessment rates for both orders were increased by 3 cents per cwt from $0.065 to the current rate of $0.095 per cwt for the Appalachian order and from $0.070 to $0.10 per cwt for the Southeast order.

The hearing record reveals that the Appalachian order was able to pay all transportation credit claims for every month since implementation through September 2004. For the remainder of 2004, the Appalachian Market Administrator began prorating the transportation credit payments. As discussed earlier in this decision, the Southeast order has prorated the transportation credit payments since 2001.

Specifically, the record shows that for the Appalachian order 41, 39 and 43 percent of the transportation credit claims were paid in October, November and December of 2004, respectively. Likewise for the Southeast order, only 86, 21, 26, 28 and 47 percent of the claims were paid for the months of August through December of 2004, respectively. 90 percent and 31 percent of the claims were paid from the Appalachian order in September and October of 2005, respectively. Similarly, the record reveals that for the Southeast order, only 41 percent and 23 percent of the claims were paid for the same time periods in 2005. Despite the assessment rate increase that became effective November 2005, evidence indicates that only 58 percent of the transportation credit claims for the Appalachian order were paid and only 40 percent of the claims for the Southeast order were paid during November of 2005. Table 2 below illustrates the percent paid from the TCBF for the Appalachian and Southeast orders:

TABLE 2.—PERCENT OF TRANSPORTATION CREDITS PAID

	Percent of transportation credits paid	
	Appalachian marketing area FO 5	Southeast marketing area FO 7
Jul 04	100.0	100.0
Aug 04	100.0	85.5
Sep 04	100.0	21.4
Oct 04	40.6	26.3
Nov 04	39.0	28.4
Dec 04	42.8	47.0
Jul 05	100.0	100.0
Aug 05	100.0	100.0
Sep 05	89.6	41.3
Oct 05	30.6	23.1
Nov 05 *	58.0	40.3

*Effective November 1, 2005, the transportation credit assessment rates were increased by 3 cents for the Appalachian and Southeast orders.
Source: Appalachian and Southeast Market Administrator data.

Maximum Assessment Rates

The record demonstrates that at the current transportation credit mileage rate of 0.35 cents per cwt per mile, the TCBF assessments for Appalachian and Southeast marketing areas have been insufficient to pay all transportation credit claims, especially during the time when payment of credits are most needed. Preventing the proration of the transportation credit reimbursement payments would have required that the assessment rates be higher than they are currently. Evidence submitted by the SMA witness showed that the maximum transportation credit assessment rate for the Appalachian order would have needed to be $0.0889 and $0.0953 per cwt for 2004 and 2005, respectively. Similarly, evidence by the SMA witness suggested that the assessment rate for the Southeast order would have needed to be $0.1318 and $0.1246 per cwt for 2004 and 2005, respectively. Such evidence further supports the need to increase the transportation credit assessment rates.

The adoption of the variable MRF that would be calculated and adjusted with changes in diesel fuel prices (as presented in Proposal 3) will most likely increase the current mileage rate of 0.35 cents per cwt per mile. Relying on EIA data, the record reveals that applying the calculated mileage rates to the months of July through December 2005 would have resulted in transportation credit mileage rates ranging from 0.432 to 0.461 cents per cwt per mile for both orders. If a transportation credit mileage reimbursement rate of 0.46 cents per cwt per mile had been in place rather than the current rate of 0.35 cents per cwt, the maximum transportation credit assessments needed for the Appalachian order to assure that the TCBF covered all claims would had to have been $0.133 and $0.1415 per cwt for 2004 and 2005, respectively. The Southeast order would have needed a maximum transportation credit assessment rate of $0.1927 and $0.1869 per cwt for 2004 and 2005, respectively. This analysis supports concluding that increasing the current Appalachian order maximum transportation credit assessment rate by 5.5 cents per cwt and the Southeast order maximum assessment rate by 10 cents per cwt is warranted.

The proposed increase in the maximum transportation credit assessment rate for the Southeast order is greater than the amount for the Appalachian marketing area. The record reveals that the Appalachian and Southeast marketing areas experience differing costs in supplying supplemental milk to meet Class I needs. As previously noted,

transportation credit assessments have, in the past, been waived in the Appalachian order. This has not been the case for the Southeast order. The transportation credit reimbursement on claims for the Southeast order have been prorated at greater rates than those of the Appalachian order in 2004 and is reflective of higher costs in supplying supplemental milk to the Southeast marketing area. The Appalachian marketing area receives the majority of its supplemental milk supplies from the northern, Mid-Atlantic States. The Southeast marketing area receives the majority of its supply from the Midwest and southwestern states. The location of supplemental milk supplies for the Southeast marketing area tends to be at a farther distance from the marketing area than for the Appalachian marketing area. Accordingly, the record supports increasing the maximum transportation credit assessments for both marketing areas by different amounts.

Precautionary measures are currently provided in the transportation credit provisions such that the rate of assessments beyond actual handler claims is unlikely. The transportation credit provisions provide the Market Administrators the authority to reduce or waive assessments as necessary to maintain sufficient fund balances to pay the transportation credits requested. Therefore, increasing the maximum transportation credit assessment rates will not result in an accumulation of funds beyond what is needed to pay transportation credit claims and no additional precautionary measures are necessary beyond those currently provided.

The record supports concluding that local milk production is expected to continue declining within both marketing areas and will result in an even greater reliance on supplemental milk to meet the fluid milk needs of the markets. Record evidence shows a constant increase in both the volume and distance that supplemental milk supplies are obtained, especially for the Southeast marketing area. As such, it is reasonable that future transportation credit claims will increase. In this regard, it is important to prevent exhausting the TCBF before the payment of claims on supplemental milk. Doing so is consistent with the fundamental purposes of the transportation credit provisions. Therefore, the adoption of Proposal 1, as proposed by DFA, will tend to better assure that the rate of assessments will keep pace with the payments from the TCBF.

Diversion Limit Standard for Supplemental Milk

The intent of a proposal offered by Dean, published in the hearing notice as Proposal 4, seeks to provide a method to limit the amount of additional milk being pooled by diversion on the Appalachian and Southeast orders. As proposed, Dean's proposal would change the amount of transportation credits paid on eligible supplemental milk depending on the amount of milk delivered to plants other than pool distributing plants—this includes diversions to plants located outside of the marketing areas and deliveries to pool supply plants. Simply put, the greater the volume of diversions, the lower the amount of transportation credits paid. In this regard, Dean's proposal attempts to provide an incentive to limit diversions *indirectly* by reducing transportation credits paid on supplemental milk. This decision agrees with the need to limit pooling diverted milk on the orders that is linked to supplemental milk deliveries to distributing plants. Rather than attempt to create disincentives to pooling diverted milk indirectly, this decision addresses the issue *directly* by adopting a zero diversion limit standard on supplemental milk deliveries to distributing plants that receives transportation credits.

The record reveals that the volume of supplemental milk needed to serve the Class I needs of the marketing areas has grown over time and is expected to continue growing. Supplemental milk is representing a greater percentage of the Southeast market's total Class I utilization. The record reveals that for the months of July through December, supplemental milk accounted for 16 percent of total Class I utilization in 2004. For 2005, such supplemental milk as a percent of total Class I utilization increased to 19 percent.

In addition, the record indicates that, for the Southeast marketing area, the monthly weighted average distance supplemental milk eligible to receive transportation credits traveled ranged from 578 to 627 miles during July through December 2000. During July through November 2005, the weighted average distance increased and ranged from 682 to 755 miles. The amount of supplemental milk receiving transportation credits during 2005 was nearly 686 million pounds, 541 million pounds during 2004, and 363 million pounds during 2000. This represents an 89 percent increase in the amount of supplemental milk receiving transportation credits in 2005 since 2000, and a 27 percent increase since 2004.

For the Southeast order, the record reveals that total diversions at locations outside of the Appalachian and Southeast marketing areas totaled 883.4 million pounds in 2004. Total diversions outside of the marketing areas for 2005, not including the months of November and December, was 965.6 million pounds, an increase of 9.3 percent from 2004. Such data for November and December 2005 was not contained in the record. For the months of January through June, when transportation credits *are not* available, total diversions outside the marketing areas increased almost 18 percent from 2004 to 2005. During the time period of July through October, when transportation credits *are* available, such diversions increased over 27 percent from 2004 to 2005. It is reasonable, given the trend of the data, that the percentage increase from 2004 would have been greater than 27 percent if data had been available for the months of November and December 2005.

It is reasonable to conclude that diversions outside the Appalachian and Southeast marketing areas are most likely be attributed to supplemental milk eligible to receive transportation credits. The record reveals that for the Southeast marketing area, the 27 percent increase in the amount of milk receiving transportation credits from 2004 through 2005 corresponds with the 27 percent increase of diversions outside the marketing areas between 2004 and 2005. It is also reasonable to conclude from the record that it is in the interests of the handler supplying supplemental milk, and in this case, cooperatives in their capacity as handlers, to maximize the value of diversions. Doing so would require pooling the maximum amount of diverted milk to the closest location from where supplemental milk was sourced. Therefore, relying on data provided by the Market Administrator for the Southeast marketing area, for the months when transportation credits are available, the calculated total maximum diverted pounds associated with supplemental milk would have totaled over 178 million pounds in 2004 and over 226 million pounds in 2005. On the basis of these calculations, an estimate of diversions attributed to supplemental milk is 64 percent of total diversions for both 2004 and 2005, ranging from 56 percent to 77 percent of the total known diversions outside the marketing areas.

The contribution from diversions associated with supplemental milk to total outside diversions is nearly three

times greater than the contribution of the supplemental milk to Class I utilization. As previously discussed, for 2004 and 2005, supplemental milk represented about 15.9 and 19 percent, respectively, of total Class I utilization. However, estimated diversions attributable to supplemental milk represent approximately 64 percent of total diversions. Clearly, not only do transportation credits offset the costs of hauling supplemental milk to the markets, they also contribute to pooling much more milk on the orders through the diversion process.

For the Appalachian order, data contained in the record is much more limited on determining the diversions arising from supplemental milk that is eligible to receive transportation credits. What can be reasonably concluded is that the pooling of diverted milk that is linked to supplemental milk is not nearly the magnitude of such pooled diversions as on the Southeast order. For the Appalachian order, evidence indicates that total diversions at locations outside of the Appalachian and Southeast marketing areas, for the time period of January through June, increased by 64.4 percent from 2004 to 2005. Total diversions from the time period of July through November, when transportation credits are available, decreased over 20 percent from 2004 to 2005.

For the Appalachian order, only two month data—October and November 2005—is available to estimate the maximum diversions that could be associated with to supplemental milk. Relying on Appalachian Market Administrator data, it is estimated that the maximum diversions from milk eligible to receive transportation credits during October and November 2005 to be approximately 34 percent and 28 percent, respectively, of the total diversions at locations outside the Appalachian and Southeast marketing areas. Supplemental milk on the Appalachian order for October and November 2005 is estimated to be approximately 19 percent and 16 percent, respectively, of the total Class I milk pooled.

Pooling diversions of this milk differs from pooling diverted milk that is part of regular supply of milk of the marketing area. Pooling diverted milk, made possible by supplemental milk eligible to receive transportation credits, allows more milk to be pooled on the order than normal. Pooling of this milk is different than pooling milk that is part of the regular supply for the marketing area. The difference is that producers of milk eligible to receive transportation credits *are not* a part of the regular and consistent supply of milk that serves the Class I needs of the markets. These producers are, therefore, supplemental suppliers of milk to the Appalachian and Southeast marketing areas. Transportation credit qualifying criteria *excludes* the milk of producers who are regularly pooled on the orders.

Pooling diverted milk arising from supplemental milk receiving transportation credits not only offsets the intended benefit of increasing the supply of milk for fluid uses, it also lowers blend prices. Higher blend prices provide important economic signals: The incentive (1) to continue supplying the markets, (2) to increase local production and (3) to attract the milk of producers to become regular and consistent suppliers.

The lower blend prices received by producers who regularly supply the markets relative to producers who supply supplemental milk send contradictory pricing signals. Lower blend prices do not send the proper price signals to local producers to increase local production or to continue supplying the Class I needs of the markets, and the signal to attract a regular and consistent milk supply from other producers is negated.

The availability of transportation credits on supplemental milk provides a platform to pool additional diverted milk at locations distant to the marketing areas. Milk diverted from supplemental producers is more likely to be diverted at locations far from the marketing areas. The record reveals that suppliers of the supplemental milk to the Appalachian and Southeast marketing areas pool diverted milk at locations as far away as California and Utah. Supplemental milk suppliers benefit in three ways: (1) Receiving reimbursement for costs of transporting milk to the deficit markets, (2) receiving cost savings from the diverted milk not transported to the marketing areas and (3) receiving higher blend prices on the diverted milk that would have otherwise been pooled on a different order with a typically lower blend price.

The pooling of milk that is not part of the regular and consistent supply of milk which serves the Class I needs of the market is contradictory to the intent of an order's pooling standards and provisions. The pooling standards of the orders serve to identify the milk of producers who regularly and consistently serve the Class I needs of the marketing areas. Pooling milk that is available but not immediately needed for Class I use is provided through diversion limit standards. Diversion limit standards provide the criteria in determining how much additional milk can be pooled on the orders. Diverted milk in this context reflects the legitimate reserve supply of milk available to serve the Class I needs of the marketing areas and, therefore, receives the blend of the orders.

Since implementation of Federal milk order reform, there have been many formal rulemakings that amended orders to more properly identify the milk of producers which should and should not be pooled on the orders. The milk of producers who are the consistent and reliable suppliers in serving the Class I needs of the market should have their milk pooled. This foundation principle of orderly marketing in milk marketing orders is essentially disregarded for 6 months every year because the orders allow the pooling of diverted milk from producers who are specifically identified as not being "producers" under either of the orders.

The lowering of blend prices by pooling such diverted milk is an unintended outcome not foreseen when the transportation credit provisions of the Appalachian and Southeast orders were implemented and amended. As the blend prices are reduced so is the incentive for local milk production. The markets become less capable of supplying their own Class I needs and supplemental milk supplies needed to meet Class I needs are not likely to be supplied without reliance on additional transportation credits.

The pooling of diverted milk associated to supplemental milk would seem to offer substantial benefits to cooperative suppliers. The record reveals that when transportation credits were first implemented, well over 90 percent of hauling costs were offset while today about 45 percent is reimbursed. This clearly represents a burden that is borne by the cooperatives who are supplying supplemental milk.

Pooling diverted milk at locations far from the marketing areas based on supplemental milk eligible to receive transportation credits would provide additional revenue to help offset hauling costs not covered by the current assessment rate. This diverted milk receives the blend price of the order on which it is pooled. The benefit is that the blend price received on such diverted milk on either the Appalachian or Southeast order, as the case may be, is historically higher than the price the milk would otherwise receive.

As presented above, this decision adopts a variable mileage rate factor, which will reimburse hauling costs at a level more reflective of actual costs, in addition to a significantly higher transportation credit assessment. To the extent that it is necessary to offset the

higher costs of transporting supplemental milk, the adoption of a variable MRF and the increase in the assessment rates should significantly reduce or eliminate the need to seek generating revenue to offset hauling costs at the expense of producers of the two marketing areas who are regularly and consistently supplying milk for the Class I needs.

Accordingly, this decision finds that the pooling of diverted milk arising from supplemental milk supplies receiving transportation credits needlessly results in the unwarranted lowering of the blend price to producers whose milk regularly and consistently supplies the Class I needs of the Appalachian and Southeast marketing area. Such milk is not part of the reliable and consistent supply of milk serving the Class I needs of the two markets and is not available for such service. Pooling this milk on the orders is indicative of disorderly marketing. Consequently, such milk should not be pooled on the orders. Accomplishing this intent necessitates adoption of a zero diversion limit standard on supplemental milk supplies receiving transportation credits.

2. Determination of Emergency Marketing Conditions

Evidence presented at the hearing and in post-hearing briefs establishes that current transportation credits of the Appalachian and Southeast orders are inadequate to meet current and expected future needs into the foreseeable future. Adopting a variable MRF by which to reimburse the suppliers of supplemental milk is needed due to the escalating fuel costs, coupled with the declining milk production in the southeastern United States that makes supplemental milk needs necessary to meet the fluid needs of the markets. The increases in the maximum rates of assessment for the Appalachian and Southeast orders adopted in this decision are necessary to sufficiently cover the transportation credit balancing fund payments. Conversely, the blend price received by producers who are regularly and consistently serving the Class I needs of the Appalachian and Southeast marketing areas is being unnecessarily eroded by pooling diverted milk that is associated with supplemental milk supplies eligible to receive transportation credits.

Additionally, the need for immediate action per dairy producer approval is warranted because the current transportation credit provisions will be inadequate to meet the fluid needs of the marketing areas and the need of supplies to recover a higher percentage of costs associated with providing supplemental milk during the months of July through December of 2006. Consequently, it is determined that emergency marketing conditions exist to omit the issuance of a recommended decision. The record clearly establishes a basis as noted above for amending the orders on an interim basis. The opportunity to file written exceptions to the proposed amended orders remains.

In view of these findings, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs, 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 claims 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 Appalachian and Southeast orders was 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.

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

(a) The interim marketing agreement and the order, 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 with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreement and the order, 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 interim marketing agreement and the order, 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, the marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the order regulating the handling of milk in the Appalachian and Southeast marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim orders and the interim marketing agreements annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of June 2006 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian and Southeast marketing areas is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing order.

Dated: September 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Appalachian and Southeast Marketing Areas

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed,

except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. Section 1005.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1005.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant(or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

* * * * *

2. Section 1005.81 is revised to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June January period, after adjusting the transportation credits disbursed during the prior Juney–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would had been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

3. Section 1005.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

4. Add a new § 1005.83 to read as follows:

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute a mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 four weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

5. Section 1007.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month; excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

* * * * *

6. Section 1007.81 is revised to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.20 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-January period, after adjusting the transportation credits disbursed during the prior June-January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June-January period. In the event that during any month of the June-January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would had been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

7. Section 1007.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

* * * * *

8. Add a new § 1007.83 to read as follows:

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the MRF.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

Marketing Agreement Regulating the Handling of Milk in the Appalachian and Southeast Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1005.1 to 1005.86 and 1007.1 to 1007.86 all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR Part 1030) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ 2006, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

[FR Doc. 06–7497 Filed 9–6–06; 8:45 am]

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1030

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03–B]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; final decision.

SUMMARY: This document is the final decision proposing to adopt amendments to the Upper Midwest order intended to deter the de-pooling of milk and increase the order's maximum administrative assessment rate. This final decision is subject to producer approval by referendum.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This final decision adopts amendments that: (1) Establish a limit on the volume of milk a handler may pool during the months of April through February to 125 percent of the volume of milk pooled in the prior month; (2) Establish a limit on the volume of milk a handler may pool during the month of March to 135 percent of the volume of milk pooled in the prior month; and (3) Allow the Market Administrator to increase the maximum administrative assessment rate up to 8 cents per hundredweight on all pooled milk if necessary to maintain the required fund reserves. The proposed amended order is subject to producer approval by referendum.

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. The 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, as amended (7 U.S.C. 601–674), 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 inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department 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 manufacturer 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.

During August 2004, the month during which the hearing occurred, there were 15,802 dairy producers pooled on and 60 handlers regulated by the Upper Midwest (UMW) order. Approximately 15,608 producers, or 97 percent, were considered small businesses based on the above criteria. Of the 60 handlers regulated by the UMW during August 2004, 49 handlers, or 82 percent, were considered small businesses.

The adopted amendments regarding the pooling standards serve to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with and consistently serve the fluid needs of the UMW marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and, by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk.

Criteria for pooling are established without regard to the size of any dairy industry organization or entity. Administrative assessments are similarly charged without regard to the size of any dairy industry organization or entity. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This action 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 approved 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.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior documents in this proceeding:

Notice of Hearing: Issued June 16, 2004; published June 23, 2004 (69 FR 34963).

Notice of Hearing Delay: Issued July 14, 2004; published July 21, 2004 (69 FR 43538).

Tentative Partial Decision: Issued April 8, 2005; published April 14, 2005 (70 FR 19709).

Interim Final Rule: Issued May 26, 2005; published June 1, 2005 (70 FR 31321).

Final Partial Decision: Issued September 29, 2005; published October 5, 2005 (70 FR 58086).

Final Partial Rule: Issued December 5, 2005; published December 9, 2005 (70 FR 73126).

Recommended Decision: Issued February 15, 2006; published February 22, 2006 (71 FR 9004).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the UMW marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The amendments set forth below are based on the record of a public hearing held at Bloomington, Minnesota, on August 16–19, 2004, pursuant to a notice of hearing issued June 16, 2004, published June 23, 2004 (69 FR 34963), and a notice of hearing delay issued July 14, 2004, and published July 21, 2004(69 FR 43538).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on February 15, 2006, issued a Recommended Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, conclusions and rulings of the Recommended Decision, with one modification, are hereby approved, adopted and are set forth herein. The material issues on the record of hearing relate to:

1. Pooling Standards
   A. Establishing Pooling Limits
   B. Producer Definition
2. Administrative Assessment Rate

Findings and Conclusions

This final decision specifically addresses proposals published in the hearing notice as Proposals 3, 4, and 5 and features of Proposal 2 that seek to establish a limit on the volume of milk that can be pooled on the order, features of Proposal 6 intending to clarify the *Producer* definition by providing a definition of "temporary loss of Grade A approval," and Proposal 7 which seeks to increase the order's maximum administrative assessment rate. As published in the hearing notice, Proposals 1, 6, and a portion of Proposal 2 concerning diversion limit standards and transportation credits were addressed in a tentative partial decision published on April 14, 2005 (70 FR 19709). For the purpose of this decision, references to Proposal 2 will only pertain to the first portion regarding de-pooling and references to Proposal 6 will only pertain to establishing a definition of "temporary loss of Grade A approval."

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

A. Establishing Pooling Limits

Preliminary Statement. Federal milk marketing orders rely on the tools of classified pricing and marketwide pooling to assure an adequate supply of milk for fluid (Class I) use and to provide for the equitable sharing of the revenues arising from the classified pricing of milk. Classified pricing assigns a value to milk according to how the milk is used. Regulated handlers who buy milk from dairy farmers are charged class prices according to how they use the farmer's milk. Dairy farmers are then paid a weighted average or "blend" price. The blend price that dairy farmers are paid for their milk is derived through the marketwide pooling of all class uses of milk in a marketing area. Thus each producer receives an equal share of each use class of milk and is indifferent as to the actual class for which the milk was used. The Class I price is usually the highest class price for milk. Historically, the Class I use of milk provides the additional revenue to a marketing area's total classified use value of milk.

The series of class prices that are applicable for any given month are not announced simultaneously. The Class I price and the Class II skim milk price are announced prior to the beginning of the month for which they will be effective. Class prices for milk in all other uses are not determined until on or before the 5th day of the following month. The Class I price is determined by adding a differential value to the higher of either an advanced Class III or Class IV value. These values are calculated based on a formula using National Agricultural Statistics Service (NASS) survey prices of cheese, butter, and nonfat dried milk powder for the first two weeks of the preceding month. For example, the Class I price for August is announced in late July and is based on the higher of the Class III or IV value computed using NASS commodity price surveys for the first two weeks of July.

The Class III and IV prices for the month are determined and announced after the end of the month based on the NASS survey prices for the selected dairy commodities during the month. For example, the Class III and IV prices for August are based on NASS survey commodity prices during August. A large increase in the NASS survey price for the selected dairy commodities from one month to the next can result in the Class III or IV price exceeding the Class I price. This occurrence is commonly referred to by the dairy industry as a "class price inversion." A producer price inversion generally refers to when the Class III or IV price exceeds the classified use value, or blend price, of milk for the month. Price inversions have occurred with increasing frequency in Federal milk orders since the current pricing plan was implemented on January 1, 2000, despite efforts made during Federal Order Reform to reduce such occurrences. Price inversions can create an incentive for dairy farmers and manufacturing handlers who voluntarily participate in the marketwide pooling of milk to elect not to pool their milk on the order. Class I handlers do not have this option; their participation in the marketwide pool is mandatory.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Classes. In essence, the PPD is the dairy farmer's share of the additional/reduced revenues associated with the Class I, II and IV milk pooled in the market. If the value of the Class I, II and IV milk in the pool is greater than the Class III value, dairy farmers receive a positive PPD. However a negative PPD can occur if the value of the Class III milk in the pool exceeds the value of the remaining classes of milk in the pool. This can occur as a result of the price inversions discussed above.

The UMW Federal order operates a marketwide pool. The Order contains pooling provisions which specify criteria that, if met, allow dairy farmers to share in the benefits that arise from classified pricing through pooling. The equalization of all class prices among handlers regulated by an order is accomplished through a mechanism known as the producer settlement fund (PSF). Typically, Class I handlers pay the difference between the blend price and their use-value of milk into the PSF. Manufacturing handlers typically receive a draw from the PSF, usually the difference between the Class II, III or IV price and the blend price. In this way, all handlers pay the class value for milk

and all dairy farmer suppliers receive at least the order's blend price.

When manufacturing class prices of milk are high enough to result in a use-value of milk for a handler that is higher than the blend price, manufacturing handlers may choose to not pool their milk receipts. Opting to not pool their milk receipts allows these handlers to avoid the obligation of paying into the PSF. The choice by a manufacturing handler to not pool their milk receipts is commonly referred to as "de-pooling." When the blend price rises above the manufacturing class use-values of milk these same handlers again opt to pool their milk receipts. This is often referred to as "re-pooling." The ability of manufacturing handlers to de-pool and re-pool manufacturing milk is viewed by some market participants as being inequitable to both producers and handlers.

The "De-pooling" Proposals. Proponents are in agreement that milk marketing orders should contain provisions that will tend to deter the practice of de-pooling. Four proposals intending to deter the de-pooling of milk were considered in this proceeding. The proposals offered different degrees of deterrence against de-pooling by establishing limits on the amount of milk that can be re-pooled. The proponents of these four proposals are generally of the opinion that de-pooling erodes equity among producers and handlers, undermines the orderly marketing of milk and is detrimental to the Federal order system.

Two different approaches on how to best limit de-pooling are represented by these four proposals. The first approach, published in the hearing notice as Proposals 2 and 5, addresses de-pooling by limiting the volume of milk a handler can pool in a month to a specified percentage of what the handler pooled in the prior month. The second approach, published in the hearing notice as Proposals 3 and 4, addresses de-pooling by establishing what is commonly referred to as a "dairy farmer for other markets" provision. These proposals would require milk of a producer that was de-pooled to not be able to be re-pooled by that producer for a defined time period. All proponents agreed that while none of the proposals would completely eliminate de-pooling, they would likely deter the practice.

Of the four proposals received that would limit de-pooling, this decision adopts Proposal 2, offered by Mid-West Dairymen's Company (Mid-West) on behalf of Cass-Clay Creamery Inc. (Cass-Clay); Dairy Farmers of America, Inc. (DFA); Foremost Farms USA Cooperative (Foremost Farms); Land O'Lakes Inc. (LOL); Milwaukee Cooperative Milk Producers (MCMP); Manitowoc Milk Producers Cooperative (MMPC); Swiss Valley Farms Company (Swiss Valley); and Woodstock Progressive Milk Producers Association (Woodstock). Hereinafter, this decision will refer to these proponents as "Mid-West, *et al.*" Although Foremost Farms was a proponent of Proposal 2, no testimony was offered on their behalf. At the hearing, Plainview Milk Products Cooperative and Westby Cooperative Creamery also supported the testimony given on behalf of Mid-West, *et al.* The proponents of Proposal 2 are all cooperatives representing producers who supply the milk needs of the marketing area and is pooled on the UMW order.

Specifically, adoption of Proposal 2 will limit the volume of milk a handler can pool in a month to no more than 125 percent of the volume of milk pooled in the prior month during the months of April through February, and to no more than 135 percent of the prior month's pooled volume in the month of March. Milk diverted to nonpool plants in excess of this limit will not be pooled. Milk shipped to pool distributing plants in excess of the volume shipped to pool distributing plants in the prior month will not be subject to the 125 or 135 percent limitation.

As published in the hearing notice, Proposal 5, offered by Dean Foods Company (Dean), addresses de-pooling in a similar manner as Proposal 2, but would establish a limit on the total volume of milk a handler could pool in a given month to 115 percent of the volume that was pooled in the prior month. Dean is a handler who operates manufacturing plants and distributing plants in the UMW marketing area. Producer milk shipped to and physically received at a pool distributing plant, and producer milk that was pooled continuously on another Federal Order during the previous 6 months, would not be subject to this pooling standard. Proposal 5 is not recommended for adoption.

As published in the hearing notice, Proposals 3 and 4, also offered by Dean, address de-pooling by establishing defined time periods during which de-pooled milk could not be pooled. Proposal 3 would require an annual pooling commitment by a handler to the UMW market. As advanced in Proposal 3, if the milk of a producer is de-pooled in a month, the milk of a producer could not re-establish eligibility for pooling on the order during the following 11 months unless 10 day's milk production of a producer was delivered to a pool distributing plant during the month. Under Proposal 3, handlers that de-pool milk have limited options to return milk to the pool, either shipping 10 day's milk production of a producer to a pool distributing plant during the month or waiting 11 months to regain pooling eligibility.

Proposal 4 is similar to Proposal 3 but is less restrictive. Under Proposal 4, as modified at the hearing, if a producer's milk is de-pooled in any of the months of February through June, or during any of the preceding 3 months, or during any of the preceding months of July through January, the equivalent of at least 10 day's milk production would need to be physically received at a pool distributing plant in order to pool all of the dairy farmer's production for the month. Additionally, if the milk of a dairy farmer is de-pooled in any of the months of July through January, or in a preceding month, at least 10 day's milk production of the dairy farmer would need to be delivered to a pool distributing plant to have all the milk of the dairy farmer pooled for the month. Proposals 3 and 4 are not adopted.

The current *Producer milk* provision of the UMW order considers the milk of a dairy farmer to be producer milk when it is delivered directly from farms to a pool plant or diverted by a pool plant or cooperative handler to a nonpool plant. Milk is not eligible for diversion to nonpool plants unless at least 1 day's production of such dairy farmer is received at a pool plant anytime during the initial qualifying month, often referred to as "touching-base." To be eligible to pool all of its milk receipts, the pooling handler must ship at least 10 percent of its milk receipts to a pool distributing plant, producer-handler, a partially regulated distributing plant, or a pool distributing plant regulated by another Federal order. A handler's diversion of milk to nonpool plants can only be made to nonpool plants located in the States of Illinois, Iowa, Minnesota, Wisconsin, North Dakota, South Dakota, and the Upper Peninsula of Michigan. Milk that is subject to inclusion in another marketwide equalization program operated by a state government is not considered producer milk. The order currently does not limit a handler's ability to re-pool milk.

The proponents of Proposals 2, 3, 4 and 5 are all of the opinion that the current pooling standards are inadequate because they enable manufacturing handlers to de-pool milk when advantageous to do so and immediately re-pool milk in a following month if advantageous to do so. According to the proponents, the UMW blend price is lowered when large

volumes of sometimes higher-valued milk used for manufacturing are de-pooled and when these large volumes of de-pooled milk return to the pool. Furthermore, the witnesses argued that de-pooling handlers do not account to the UMW pool at the order's classified prices and therefore face different costs than their similarly situated pooling competitors. The proponents insisted that the pooling standards of the order need to be amended to ensure producer and handler equity, even though the proposals differed on how best to meet this end.

A witness appearing on behalf of Mid-West, *et al.*, testified in support of Proposal 2. The witness was of the opinion that the underlying principles of the Federal order program are to supply milk to the fluid market, equitably share pool proceeds among all participating producers, and promote orderly marketing. The witness explained that the Federal order program achieves these objectives through classified pricing, through which Class I milk generates revenue for the pool; and marketwide pooling, which equalizes payments to all participating producers who serve the market regardless of how the milk of any single producer is utilized.

The Mid-West, *et al.*, witness said that currently milk utilized at manufacturing plants can be de-pooled and again pooled in a subsequent month when it is economically beneficial to the handler. When choosing to pool or not to pool, the witness explained, handlers assess whether participating in the marketwide pool would require them to make a payment into or receive a payment from the PSF. According to the witness, milk utilized as Class I must always be pooled regardless of whether the pooling handler would make a payment into, or receive a payment from, the PSF.

The Mid-West, *et al.*, witness testified that because manufacturing milk can freely exit and return to the pool, producers who regularly and consistently service the UMW fluid market are not being treated equitably under the terms of the order. According to the witness, these producers receive a lower blend price because the value of the milk that was de-pooled was not shared equitably among all the market's producers.

The Mid-West, *et al.*, witness maintained that the ability of manufacturing handlers to de-pool milk creates inequities among handlers and producers. The witness said that when the PPD is negative, dairy farmers receive different payments for their milk depending on if their milk was pooled, and handlers are not required to account to the pool at classified prices depending on their pooling decisions. Class I handlers who must pool their milk receipts always have a disadvantage when the PPD is negative, explained the witness, because manufacturing handlers can opt to de-pool and avoid paying into the PSF. According to the witness, this results in higher prices that can be paid to the producers supplying manufacturing handlers. The witness contrasted that when the PPD is positive, milk that had been de-pooled seeks to return to the pool. According to the witness, this also dilutes the blend price paid to producers who had been supplying Class I handlers.

The Mid-West, *et al.*, witness, relying on Market Administrator statistics, noted that in May 2004, all producer milk pooled on the order was subject to a negative $1.97 per hundredweight (cwt) PPD. However, the witness emphasized that a manufacturing handler who chose to de-pool its milk supply and did not have to account to the pool at classified prices had an imputed PPD of zero. In other words, the witness explained, milk used in manufactured products was worth more than milk used in fluid products. Relying on additional Market Administrator statistics, the witness demonstrated that if 100 percent of eligible Class III milk had pooled in July 2003 through May 2004, the estimated PPD would have averaged a negative $0.098 per cwt rather than the actual average PPD of negative $0.773 per cwt.

The Midwest, *et al.*, witness explained how adoption of Proposal 2 would improve both producer and handler equity. The witness said that Proposal 2 would only limit the amount of milk a handler could pool up to 125 or 135 percent of the previous month's pooled volume and clarified that any milk delivered to a distributing plant would not be subject to the 125 or 135 percent pooling calculation. If Proposal 2 were adopted, the witness claimed, no current handler would have to change the physical operations of their plant. While adoption of this proposal would not end the practice of de-pooling, speculated the witness, it would establish financial consequences for handlers who might not otherwise consistently pool their milk receipts.

In explaining why adoption of Proposal 2 would be reasonable and appropriate for the UMW order, the Mid-West, *et al.*, witness said that a 125 percent standard should accommodate any change in the potential growth of a handler's pooled milk volume resulting from seasonal fluctuations in milk supply or the addition of new producers, assuming that the handler did not de-pool. Additionally, the witness added that to ensure no handler would need to change its physical operations, Proposal 2 allows a 135 percent re-pooling standard in March because of the fewer calendar days in February. The witness stressed that the 125 and 135 percent standards allow a handler to de-pool a portion of its milk supply and over a period of months, regain the ability to again pool its entire supply. The witness added that the proposal does not restrict the volume of milk able to be pooled in August since this is generally considered the start of the new marketing year.

The Mid-West, *et al.*, witness also emphasized that establishing a standard on the basis of the prior month's pooled volume has been done in other orders. The Northeast order has a "producer for other markets" provision that restricts the ability to pool the milk of a producer if the milk of that producer had been previously de-pooled, noted the witness. Furthermore, the witness said, milk orders in the south and southeastern part of the country had provisions which limited the sharing of marketwide returns in the spring months to only those producers whose milk served the fluid market during the fall months.

The Mid-West, *et al.*, witness predicted that price volatility would continue in the future and result in negative PPD's and the further de-pooling of milk. The witness was of the opinion that price volatility and de-pooling have created emergency marketing conditions that would warrant the Department to omit issuing a recommended decision.

A witness from DFA, appearing on behalf of Mid-West, *et al.*, testified in support of Proposal 2. The witness testified that DFA engages in the practice of de-pooling when warranted to earn sufficient revenue to pay their producer members a competitive milk price. The witness emphasized that de-pooling creates disorderly marketing conditions and supported Proposal 2 as the best option to deter the practice of de-pooling. The witness offered scenarios that demonstrated the financial incentives available to handlers who de-pool milk. The witness asserted that the current pooling standards of the UMW order, where producers qualify for pooling by meeting a one-day touch base standard, allow handlers the opportunity to reap financial rewards from the market by de-pooling and re-pooling their milk receipts.

The DFA witness explained that Proposal 2 was a compromise position among all the entities of Mid-West, *et al.*, noting that its adoption would improve the current disorderly market conditions arising from the practice of de-pooling. The witness noted that many alternatives were considered but the proponents were of the opinion that Proposal 2 is a significant improvement to the order's pooling provisions while still allowing handlers to make their own pooling decisions.

Witnesses from LOL, Swiss Valley, Cass-Clay, MMPC, and DFA Central Council, all appearing on behalf of Mid-West, *et al.*, testified in support of Proposal 2. Many of the witnesses testified that their respective organizations engage in the practice of de-pooling when it is advantageous but that they recognize that the practice has a negative impact on the PPD and creates disorderly marketing conditions. Consequently, they are of the opinion that while a moderate level of de-pooling should be tolerated, a set of standards should be established to deter de-pooling to maintain orderly marketing conditions.

The Mid-West, *et al.*, witnesses identified above expressed support for Proposal 2 as an acceptable and moderate approach to limiting the practice of de-pooling. The proposal would allow flexibility in making pooling decisions, explained the witnesses, but would also establish significant consequences for those who opt to de-pool large volumes of their producer milk supply. In this regard, the witnesses said that Proposal 2 would result in improving equity among handlers and among producers during times of price inversions.

A DFA dairy farmer member, whose milk is pooled on the UMW order, testified in support of Proposal 2. The witness was of the opinion that if dairy farmers want to participate in the UMW marketwide pool and share in the revenue generated from the market, they should be prepared to service the market every month. When handlers engage in the practice of de-pooling their milk receipts, the witness said, severe price fluctuations and larger, negative PPDs result that negatively affect the price paid to pooled producers. The witness was of the opinion that the adoption of Proposal 2 would result in more stable pooled milk volumes and lessen the severe and volatile price changes that producers have experienced.

A dairy farmer appearing on behalf of MCMP, whose milk is pooled on the UMW order, testified in support of Proposal 2. The witness said that their farm income was reduced during May 2004 as a result of the negative $1.97 per cwt PPD. The witness added that neighboring farms that shipped milk to other handlers reported receiving a higher price for their milk. The opinion of the witness was that the practice of de-pooling has led to non-uniform prices received by farmers and that adoption of Proposal 2 would restore price equity among producers.

Comments filed on behalf of the members of Midwest, *et al.*, Westby Cooperative Creamery, and Woodstock Progressive Milk Producers Association expressed their support for the proposed re-pooling standards of Proposal 2 and increasing the maximum administrative assessment. Midwest, *et al.*, clarified that the intent of Proposal 2 was to constrain the practice of de-pooling while still encouraging additional milk shipments for Class I use. Midwest, *et al.*, proposed that the re-pooling standard be amended to exempt milk delivered to distributing plants in excess of the previous month's pooled volume instead of the proposed standard that exempts all milk delivered to distributing plants. Midwest, *et al.*, explained that their intent was not to exempt all milk delivered to distributing plants from the re-pooling standard, rather it was to exempt any incremental increase in distributing plant deliveries to ensure that handlers would not be discouraged from serving the Class I market.

A witness appearing on behalf of Dean testified in opposition to Proposal 2. The witness said that the pooling standards of Proposal 2 are too liberal and that unlimited pooling in the month of August could allow handlers to again take advantage of the pooling system.

A witness appearing on behalf of Northwest Dairy Association (NDA) testified in opposition to Proposal 2. NDA is a dairy cooperative that markets 7 billion pounds of milk annually with members in the States of Washington, Oregon, Idaho, and Northern California. The witness explained that NDA engages in the practice of de-pooling in other Federal orders as a way to recover costs in their manufacturing of butter and cheese because the Class III and IV make allowances do not adequately reflect such costs. The NDA witness was of the opinion that the practice of de-pooling should be addressed at a national hearing that would also consider other issues such as the make allowances used in the Class III and IV price formulas.

A witness appearing on behalf of Dean testified in support of Proposals 3, 4, and 5. The witness asserted that the intent of the Federal order system is to ensure a sufficient supply of milk for fluid use and provide for uniform payments to producers who stand ready, willing, and able to serve the fluid market. While some entities are of the opinion that the Federal order system should ensure a sufficient milk supply to all plants, the Dean witness was of the opinion that the Federal order system addresses only the need for ensuring a milk supply to distributing plants. The witness elaborated on this opinion by citing examples of order provisions that stress providing for a regular supply of milk to distributing plants as a priority of the Federal milk order program.

The Dean witness was of the opinion that for the Federal milk order system to ensure orderly marketing, orders need to provide adequate economic incentives that will attract milk to fluid plants and to properly define regulations that identify the milk of those producers who can participate in the marketwide pool. The witness argued that a major flaw in the current regulations is that they allow handlers to choose when to participate in the pool. In this regard, the witness said, the order lacks the economic incentive for pool participation by its lack of an economic disincentive to the practice of de-pooling.

The Dean witness testified that Proposals 3, 4, and 5 are designed to establish proper economic incentives for supplying the fluid market and maintain equity among handlers and producers. While each proposal offered a slightly different solution to the problem, the witness said, Dean Foods supports their adoption in the following order or preference: Proposal 3, Proposal 4, and then Proposal 5.

A second witness appearing on behalf of Dean testified in support of Proposals 3, 4, and 5. The witness argued that when handlers engage in the practice of de-pooling it creates a burden on the producers who consistently serve the Class I needs of the market. According to the witness, when the PPD is negative, there is an incentive for handlers to de-pool Class III and Class IV milk. When a handler opts to de-pool, it decreases the amount of pooled milk and makes the PPD more negative than it would have been had all milk been pooled, the witness said. When the PPD is positive, milk previously de-pooled seeks to be re-pooled which increases the volume of pooled milk valued at lower classified prices and lowers the blend price paid to all producers, the witness asserted. The major "losers" in this process, concluded the witness, are the

producers whose milk is continuously pooled regardless of the PPD.

The second Dean witness said that Proposal 3 was designed to increase the availability of milk for fluid use and ensure that pool proceeds are only shared among producers who consistently service the fluid market. The witness said that if Proposal 3 is adopted, de-pooled milk could again become pooled as long as the producer delivered 10-day's milk production to a pool distributing plant for 12 consecutive months. Once that standard was met, the witness added, the producer's milk could then be pooled under the more flexible provisions of the UMW order.

The Dean witness asserted that there are three benefits to adoption of Proposal 3: (1) When the PPD is negative, more Class III milk would stay in the pool resulting in a less negative PPD; (2) Some Class III de-pooled milk would never be re-pooled which would result in a more positive PPD; and (3) Class III de-pooled milk would have to demonstrate regular and significant deliveries to distributing plants in order to be re-pooled.

In explaining Proposal 4 as an alternative to Proposal 3, the second Dean witness indicated that the difference in the two proposals is the number of months that the 10-day touch base provision would be applicable before de-pooled milk could again be pooled under normal circumstances. The witness was of the opinion that Proposal 4 would discourage some de-pooling; however, the harm caused by the practice of de-pooling would be better prevented by the adoption of Proposal 3.

The Dean witness also discussed Proposal 5 as a less desirable alternative to Proposals 3 and 4. According to the witness, Proposal 5 would limit the amount of milk that can be pooled to 115 percent of the handler's previous month's pooled milk volume. The witness explained that the greater the volume of de-pooled milk, the more time needed under Proposal 5 for a handler to re-pool all its milk receipts. This, the witness said, ensures that the entities that benefit the most from the practice of de-pooling would not receive an immediate benefit that would otherwise occur when re-pooling.

A third witness appearing on behalf of Dean testified in support of Proposal 3. The witness said that the current liberal pooling standards of the UMW order are one source of disorderly marketing and are preventing all producers from sharing equally in pool proceeds. The witness asserted that the Federal milk order system was designed so that through marketwide pooling all producers would share equally in pool proceeds, and that through classified pricing milk would move to the market's highest-valued use.

Relying on Market Administrator statistics for January 2000 through June 2004, the Dean witness asserted that the volume of pooled Class III milk varied from 1.5 billion pounds in January 2004 to 11 million pounds in April 2004. Furthermore, the witness said, the blend price in April 2004 would have been $2.97 higher if all Class III milk had been pooled. The witness was of the opinion that these large swings in the volume of pooled milk results in the disorderly marketing condition of inequitable sharing of pool proceeds among producers.

A witness appearing on behalf of Oberweis Dairy testified in support of Proposals 2 and 3. Oberweis Dairy operates a distributing plant with approximately 40 dairy farmer suppliers and 32 ice cream stores in the Chicago and St. Louis area markets. The witness was of the opinion that it is inequitable to producers and Class I handlers when manufacturing handlers engage in the practice of de-pooling. The witness was of the opinion that either all handlers should be able to engage in the practice of de-pooling or it should be prohibited. While no proposal at the hearing proposed such a restriction, the witness was of the opinion that Proposal 3 would be the best option to restore equity among producers. Nevertheless, the witness said that Oberweis would support the adoption of Proposal 2 if the Department finds it to be more appropriate.

A witness appearing on behalf of the Wisconsin Farmers Union, Minnesota Farmers Union, and the North Dakota Farmers Union testified about the negative effects of de-pooling on dairy producers. According to the witness, these organizations represent farmers of various agricultural products in their respective States. The witness asserted that when a cooperative engages in the practice of de-pooling, dairy farmers are negatively affected because the revenue a cooperative gains from de-pooling is not paid to producers by the cooperatives. The witness insisted that the practice of de-pooling should be curbed so that producers are adequately paid for the total value of their milk.

A witness appearing on behalf of Galloway Company (Galloway) testified in support of all proposals that would limit the practice of de-pooling. Galloway owns and operates a dairy manufacturing plant in the UMW marketing area. The witness was of the opinion that large negative PPD's are due, in part, to de-pooling and that has a negative impact on the income of Galloway. The witness was of the opinion that changes to order provisions to limit the ability to re-pool are necessary but had no opinion as to which proposal would be the best option.

A post-hearing brief submitted by Dean reiterated their opinion that the pooling standards of the order need to be amended to correct the disorderly marketing conditions arising from the practice of de-pooling. The brief argued that the practice of de-pooling is disorderly because a handler who de-pools milk avoids accounting to the pool at classified prices and is not required to pay its suppliers the minimum blend price. However, asserted Dean, a pooled handler not only accounts to the pool at classified prices and pays its suppliers the minimum blend price, the handler also finds it necessary to pay large premiums to keep its suppliers.

According to the Dean brief, negative PPD's and the resulting practice of de-pooling are not a national issue, noting that de-pooling typically occurs in markets with low Class I utilization such as the UMW. The Dean brief predicted that the practice of de-pooling would occur in the future and therefore concluded that the disorderly marketing conditions arising from the practice of de-pooling warrant emergency action from the Department by omitting a recommended decision.

Comments filed on behalf of Dean in response to the Recommended Decision supported the Department's decision to deter the practice of de-pooling. However, Dean expressed reservations that adoption of Proposal 2 would be sufficient to adequately deter the practice of de-pooling in the Upper Midwest marketing area. Dean also commented that the re-pooling standard for the month of February should be modified to 115 percent to account for additional days in January much like the re-pooling standard for the month of March was modified to account for the fewer days in February.

A post hearing brief submitted on behalf of Lamers Dairy, Inc. (Lamers) asserted that the ability of some handlers to engage in the practice of de-pooling when it is economically advantageous is a disorderly marketing condition. Furthermore, the brief expressed the opinion that de-pooling causes inequitable treatment among handlers because pooling handlers must account to the PSF at minimum classified prices while handlers who de-pool their milk receipts do not. The Lamers brief supported adoption of

Proposal 3 as the most appropriate solution to limit the practice of de-pooling.

A witness appearing on behalf of Mid-West, *et al.*, testified in opposition to Proposal 3. According to the witness, requiring a producer whose milk was de-pooled to deliver 10-day's milk production to a pool distributing plant is a standard that would be extremely difficult to meet. The witness stressed that finding access to a pool distributing plant for 10-day's production would not only be extremely difficult, it would also be costly. The Mid-West, *et al.*, brief also contended that the proposals offered by Dean would require physical changes in plant operations that are not necessary to address the practice of de-pooling in the UMW market.

The Mid-West, *et al.*, brief disagreed with others who were of the opinion that the de-pooling issue should be addressed at a national hearing. The brief explained that historical Federal milk order policy is that the pooling provisions of orders be reflective of each order's individual marketing conditions. Therefore, the brief concluded, it is appropriate to address the practice of de-pooling on an individual order basis.

A witness appearing on behalf of Associated Milk Producers, Inc. (AMPI) testified in opposition to all proposals intended to limit the practice of de-pooling as specified in Proposals 2, 3, 4, and 5. The witness' testimony was given on behalf of Alto Dairy Cooperative, Bongards' Creameries, Ellsworth Cooperative Creamery, Family Dairies USA, First District Association, Davisco Foods, Valley Queen Cheese Company and Wisconsin Cheesemakers Association (WCA). The members consist of cooperative associations and handlers who market or purchase milk in the UMW marketing area. Hereinafter, this coalition of members will be referred to collectively as "AMPI, *et al.*"

The AMPI, *et al.*, witness testified that the option to engage in the practice of de-pooling in response to price inversions has been a longstanding part of the Federal milk order system. The witness testified that as a result of timing differences in announcing classified prices, a lag between changes in the market value of milk used in manufacturing and corresponding changes in the Federal order Class I price sometimes results in price inversions. The witness explained that the occasional price inversion is caused by the announcement of the Class I price approximately two weeks prior to the month and the announcement of the price for milk used in Class II, III, and IV products occurring after the close of the month—a difference of six weeks. The witness drew attention to April 2004 where the value of Class III milk increased $6.02 per cwt during the six-week lag. This resulted in a blend price that was substantially less than the estimated Class III price, resulting in a large amount of de-pooled Class III milk because, the witness said, there was no incentive for manufacturing handlers to pool all of their milk receipts.

The AMPI, *et al.*, witness asserted that the argument that de-pooled milk does not serve, nor is available to serve, the fluid market is false. According to the witness, milk that is de-pooled is available to the Class I market during the month it is marketed and a decision to de-pool the milk is made after the end of the month when the Class II, III and IV prices are known. Additionally, the witness asserted that fluid milk plants always receive a continuous supply of fluid milk because of their contractual supply agreements.

The AMPI, *et al.*, witness characterized the proposals under consideration to address the practice of de-pooling as designed to penalize handlers who engage in de-pooling their Class III milk. AMPI, *et al.*, the witness stated, is strongly opposed to this change in pooling philosophy. The witness was of the opinion that the Federal order system should continue to provide for the marketwide sharing of money derived from sales of Class I milk since it is Class I sales that historically generate additional revenue to producers. However, the witness said, the order should not force handlers to share money generated from manufactured milk products to offset a low Class I price.

The AMPI, *et al.*, witness was of the opinion that the practice of de-pooling is a national issue that should be addressed in a national hearing. The witness believed that a better solution to the practice of de-pooling would be to eliminate the advanced pricing of Class I milk and instead announce all Class prices after the end of the month.

The AMPI, *et al.*, witness also testified that emergency marketing conditions do not exist to warrant the omission of a recommended decision by the Department. The witness stressed that price inversions and the practice of de-pooling have occurred in the Federal order system for decades and any major change in Department policy regarding this practice should be addressed in a recommended decision where interested parties can file comments and exceptions.

A post-hearing brief submitted on behalf of AMPI, *et al.*, reiterated their opposition to all of the proposals that seek to deter de-pooling. The brief argued that the AMAA intended for the government to only require the sharing of the revenues generated from fluid sales. According to the brief, requiring manufactured milk to remain pooled oversteps the authority of the AMAA. The brief also expressed the opinion that Proposals 3, 4, and 5 are designed to limit a producer's access to the market and should therefore be denied. Furthermore, the brief stressed that Proposals 3 through 5 would unfairly increase costs of some UMW handlers because of the increased transportation and capital investment that would be needed to comply with the proposed amendments.

A witness appearing on behalf of WCA, testified in opposition to all proposals intended to limit the practice of de-pooling as specified in Proposals 2, 3, 4, and 5. The witness testified that WCA represents dairy manufacturers and marketers with 32 of its members operating 42 pooled dairy facilities on the UMW order. According to the witness, 30 of the 42 pooled dairy facilities are small businesses and if the proposals to limit the practice of de-pooling were adopted, these small businesses would face new and significant costs to comply with the proposed new standards without benefit to their dairy farmer suppliers.

The WCA witness expressed concern that Proposal 2 addressed the practice of de-pooling without regard to the cause of negative PPD's, specifically the inversion of classified prices. The witness also said that Proposals 2, 3, 4 and 5 would put an additional administrative burden on handlers by requiring them to designate which producers would remain pooled or de-pooled. The witness asserted that access to distributing plants in the UMW market is very limited and it would be hard for a de-pooled producer to re-associate with a distributing plant in order to be eligible to again pool their milk on the order.

The WCA witness was of the opinion that Proposals 3 and 4 also would add additional transportation costs, administrative costs, and the potential need for additional silo capacity to accommodate the increased volume of milk that would be needed to meet the 10-day production delivery standard at a pool distributing plant. The witness explained that many WCA members do not have the capacity to accommodate meeting a 10-day production delivery standard for each month. The witness was also of the opinion that existing supply contracts provide ample milk supplies for the Class I market and concluded that additional deliveries to

pool plants are not needed to assure an adequate supply to Class I facilities.

Comments filed by on behalf of AMPI, Bongards' Creameries, Ellsworth Cooperative Creamery, Family Dairies USA, First District Association, Davisco Foods, Valley Queen Cheese Company, and Wisconsin Cheese Markers Association (hereinafter referred to as "AMPI Group") took exception to the re-pooling standard proposed in the Recommended Decision. They asserted that the proposed standard did not solve the underlying cause of the practice of de-pooling. The AMPI group asserted that the Department arbitrarily refused to consider proposals that would end the time lag in classified price announcements as a remedy to de-pooling and did not consider alternative proposals that would be less burdensome to handlers or requests to address the practice of de-pooling on a national basis.

AMPI Group commented that provisions which allow the market administrator to waive the re-pooling standard for handlers that experience a significant change in their milk supply due to unusual circumstances should be more specific as to what constitutes an unusual circumstance. The AMPI Group argued that small manufacturers may experience a growth in their milk supply which would not be considered an unusual circumstance and that such a situation should not cause a handler to be penalized under the re-pooling standard. The AMPI Group also cited various legal issues as reasons why the Department should not adopt the re-pooling standards.

Comments filed by Eau Galle Cheese Factory and the Wisconsin Cheese Makers Association took exception to the Department's proposed re-pooling standards and offered support for the views expressed by the AMPI Group.

Comments filed on behalf of Family Dairies USA took exception to amendments proposed in the Recommended Decision and reiterated the testimony given on their behalf at the hearing by the AMPI, *et al.*, witness.

A witness appearing on behalf of the National Family Farm Coalition, an organization representing family farms located in 32 states including those states comprising the UMW marketing area, testified in opposition to all proposals at the hearing. The witness was of the opinion that the entire Federal order system was in need of a complete reform. The witness asserted that the proponents of the proposals being heard were entities whose past actions have lowered prices received by family farmers.

A post-hearing brief submitted on behalf of Alto Dairy (Alto), a cooperative with 580 dairy farmer members in Wisconsin and Michigan, reiterated their opposition to all proposals seeking to limit the practice of de-pooling. The brief stressed that a decision to de-pool is made separately from the decision to adequately supply the Class I needs of the market.

Comments filed on behalf of Alto Dairy Cooperative and Foremost Farms USA took exception to the proposed regulations that would require a producer to be continuously pooled on another Federal order for the previous 6 months to be exempted from the re-pooling standards. Their exception asserted that a producer should be allowed to have some de-pooled milk receipts during the previous 6 months and still be exempt from the re-pooling standards of the Upper Midwest order.

An Extension Dairy Marketing Specialist from the University of Wisconsin testified on the issues surrounding the practice of de-pooling but did not support or oppose any specific proposal. The witness referred to and explained a research paper which identified and explained problems arising in the UMW marketing area by pooling distant milk, the practice of de-pooling, and the resulting economic impacts to producers. The witness said that if manufacturing prices for milk rapidly increase during the month there will be a negative PPD but as prices begin to decline, the PPD will again become positive over time. The witness also explained that a negative PPD does not mean that producers lost money. Rather, the witness clarified, the PPD is a calculation of the difference between the Class III price and the blend price that producers receive. However, concluded the witness, the ability to engage in the practice of de-pooling does result in volatile PPD's and gives rise to inequities among producers and among handlers.

Comments filed on behalf of Grande Cheese Company took exception to findings made by the Department in the Recommended Decision. Grande was of the opinion that the cause of negative PPD's is the timing of classified price announcements. In addition, they were of the opinion that the Department was incorrect in establishing re-pooling standards as a way to address negative PPD's.

Comments filed on behalf of the Cedar Grove Cheese Company (CGCC) took exception to establishing re-pooling standards. CGCC was of the opinion that previous amendments to the order's pooling provisions in a final partial decision (70 FR 58086) would deter the practice of de-pooling, making the establishment of a re-pooling standard unnecessary. CGCC advocated rejecting or delaying the implementation of the re-pooling standards until Upper Midwest market participants are given the opportunity to operate under the newly amended pooling standards. CGCC commented that the re-pooling standard would cause producers whose milk was de-pooled to be unfairly disadvantaged in subsequent months when prices are no longer inverted because their pooling handlers would be unable to pay a competitive price for their milk. CGCC also excepted to the discretion granted to the Market Administrator to determine if a handler has purposely misreported milk for the purpose of evading the re-pooling standard because it does not provide the Market Administrator or handlers with guidance for making such a finding.

All Federal milk marketing orders require the pooling of milk received at pool distributing plants—which is predominantly Class I milk—and all pooled producers and handlers on an order share in the additional revenue arising from higher valued Class I sales. Manufacturing handlers and cooperatives of Class II, III and IV uses of milk who meet the pooling and performance standards make all of their milk receipts eligible to be pooled and usually find it advantageous. Manufacturing handlers and cooperatives who supply a portion of their total milk receipts to Class I distributing plants receive the difference between their use-value of milk and the order's blend price. Federal milk orders, including the UMW order, establish limits on the volume of milk eligible to be pooled that is not for fluid uses primarily through diversion limit standards. However, manufacturing handlers and cooperatives are not required, as are Class I handlers, to pool all their eligible milk receipts.

According to the record, manufacturing handlers and cooperatives have opted to not pool their milk receipts when the manufacturing class prices of milk are higher than the order's blend price—commonly referred to as being "inverted." During such months, manufacturing handlers and cooperatives have elected to not pool all of their eligible milk receipts because doing so would require them to pay into the PSF of the order, the mechanism through which handler and producer prices are equalized. When prices are not inverted, handlers would pool all of their eligible receipts and receive a payment or draw from the PSF. In receiving a draw from the PSF, such

handlers will have sufficient money to pay at least the order's blend price to their supplying dairy farmers.

When manufacturing handlers and cooperatives opt to not pool all of their eligible milk receipts in a month, they are essentially avoiding a payment to the PSF. This, in turn, enables them to avoid the marketwide sharing of the additional value of milk that accrues in the higher-valued uses of milk other than Class I. When the Class I price again becomes the highest valued use of milk, or when other class-price relationships become favorable, the record reveals that these same handlers opt to again pool their eligible milk receipts and draw money from the PSF. It is the ability of manufacturing handlers and cooperatives opting to not pool milk and thereby avoid the marketwide sharing of the revenue accruing from non-Class I milk sales that is viewed by proponents as giving rise to disorderly marketing conditions. According to proponents, producers and handlers who cannot escape being pooled and priced under the order are not assured of equitable prices.

The record reveals that since the implementation of Federal milk marketing order reform in January 2000, and especially in more recent years, large and rapid increases in manufactured product prices during certain months have provided the economic incentives for manufacturing handlers to opt not to pool eligible milk on the UMW order. For example, during the three-month period of February to April 2004, the Class III price increased over 65 percent from $11.89 per cwt to $19.66 per cwt. During the same time period, total producer milk pooled on the UMW order decreased by over 60 percent from 1.94 billion pounds to 608 million pounds. When milk volumes of this magnitude are not pooled the impacts on producer blend prices are significant. Producers who incur the additional costs of consistently servicing the Class I needs of the market receive a lower return than would otherwise have been received if they did not continue to service the Class I market. Prices received by dairy farmers who supplied the other milk needs of the market are not known. However, it is reasonable to conclude that prices received by dairy farmers were not equitable or uniform.

The record reveals that "inverted" prices of milk are generally the result of the timing of Class price announcements. Despite changes made as part of Federal milk order reform to shorten the time period of setting and announcing Class I milk prices and basing the Class I price on the higher of the Class III or Class IV price to avoid price inversions, large month-to-month price increases in Class III and Class IV product prices sometimes trumped the intent of better assuring that the Class I price for the month would be the highest-valued use of milk. In all orders, the Class I price (and the Class II skim price) is announced prior to or in advance of the month for which it will apply. The Class I price is calculated by using the National Agricultural Statistics Service (NASS) surveyed cheese, butter, nonfat dry milk and dry whey prices for the two most current weeks prior to the 24th day of the preceding month and then adding a differential value to the higher of either the advanced Class III or Class IV price.

Historically, the advance pricing of Class I milk has been used in all Federal orders because Class I handlers cannot avoid regulation and are required to pool all of their Class I milk receipts, they should know their product costs in advance of notifying their customers of price changes. However, milk receipts for Class III and IV uses are not required to be pooled thus, Class III and IV product prices (and the Class II butterfat value) are not announced in advance. These prices are announced on or before the 5th of the following month. Of importance here is that manufacturing plant operators and cooperatives have the benefit of knowing all the classified prices of milk before making a decision to pool or not pool eligible receipts.

The record reveals that the decision of manufacturing handlers or cooperatives to pool or not pool milk is made on a month-to-month basis and is generally independent of past pooling decisions. Manufacturing handlers and cooperatives that elected to not pool their milk receipts did so to avoid making payments to the PSF and they anticipated that all other manufacturing handlers and cooperatives would do the same. However, the record indicates that normally pooled manufacturing handlers and cooperatives met the pooling standards of the order to ensure that the Class I market was adequately supplied and that they established eligibility to pool their physical receipts, including diversions to nonpool plants. Opponents to proposals to deter de-pooling are of the view that meeting the pooling standards of the order and deciding how much milk to pool are unrelated events. Proponents took the view that participation in the marketwide pool should be based on a long-term commitment to supply the market because in the long-term it is the sales of higher priced Class I milk that adds additional revenue to the pool.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Class I, II and IV milk pooled. In essence, the PPD is the residual revenue remaining after all butterfat, protein and other solids values are paid to producers. If the pooled value of Class I, II and IV milk is greater than the Class III value, dairy farmers receive a positive PPD. While the PPD is usually positive, a negative PPD can occur when class prices rise rapidly during the 6-week period between the time the Class I price is announced and the time the Class II butterfat and III and IV milk prices are announced. When manufacturing prices fall, this same lag in the announcement of class prices yields a positive PPD.

As revealed by the record, when manufacturing plants and cooperatives opted to not pool milk because of inverted price relationships, PPD's were much more negative. When this milk is not pooled, a larger percentage of the milk remaining pooled will be "lower" priced Class I milk. When manufacturing milk is not pooled the weighted average value of milk decreases relative to the Class II, III or IV value making the PPD more negative. For example, record evidence demonstrated that in April 2004, a month when a sizeable volume of milk was not pooled, the PPD was a negative $4.11 per cwt. If all eligible milk had been pooled, the PPD would have been $2.97 per cwt higher or a negative $1.14 per cwt. This $2.97 per cwt represents the additional burden borne by those producers who remained pooled.

The record reveals that when manufacturing handlers and cooperatives opt to not pool milk, unequal pay prices may result to similarly located dairy farmers. For example, Dean noted that when a cooperative delivers a high percentage of their milk receipts to a distributing plant, it lessens their ability to not pool milk, making them less competitive in a marketplace relative to other producers and handlers. Other evidence in the record supports conclusions identical to Dean that when a dairy farmer or cooperative is able to receive increased returns from shipping milk to a manufacturing handler during times of price inversions, other dairy farmers or cooperatives who may have shipped more milk to a pool distributing plant are competitively disadvantaged.

The record of this proceeding reveals that the ability of manufacturing handlers and cooperatives to not pool all of their eligible milk receipts gives rise to disorderly marketing conditions and warrants the establishment of

additional pooling standards to safeguard marketwide pooling. Current pooling provisions do not require or prohibit handlers and cooperatives from pooling all eligible milk receipts. However, the record reveals that when handlers and cooperatives opt to not pool milk inequities arise among producers and handlers that are contrary to the intent of the Federal milk marketing order program—maintaining orderly marketing conditions.

The record contains extensive testimony regarding the effects on the milk order program resulting from advance pricing and the priority the milk order program has placed on the Class I price being the highest valued use of milk. It remains true that the Class I use of milk is still the highest valued use of milk notwithstanding those occasional months when milk used in usually lower-valued classes may be higher. This has been demonstrated by an analysis of the effective Class I differential values—the difference in the Class I price at the base zone of Cook County, Illinois, and the higher of the Class III or Class IV price—for the 65 month period of January 2000 through May 2005 performed by USDA.[1] These computations reveal that the effective monthly Class I differential averaged $1.76 per cwt. Accordingly, it can only be concluded that in the longer-term Class I sales continue to be the source of additional revenue accruing to the pool even when, in some months, the effective differential is negative.

Price inversions occur when the wholesale price for manufactured products rises rapidly indicating a tightening of milk supplies to produce those products. It is for this reason that the Department chose the higher of the Class III or Class IV prices as the mover of the Class I price. Distributing plants must have a price high enough to attract milk away from manufacturing uses to meet Class I demands. As revealed by the record, this method has not been sufficient to provide the appropriate price signals to assure an adequate supply of milk for the Class I market. Accordingly, additional measures are needed as a means of assuring that milk remains pooled and thus available to the Class I market. Adoption of Proposal 2 is a reasonable measure to meet the objectives of orderly marketing.

This final decision does find that disorderly marketing conditions are present when producers do not receive uniform prices. Handlers and cooperatives opting to not pool milk do not account to the pool at the classified use-value of those milk receipts. They do not share in all the additional costs and burdens with those producers who are pooled and are incurring the costs of servicing the Class I needs of the market. This is not a desired or reasonable outcome especially when the same handlers and cooperatives will again pool all of their eligible receipts when class-price relationships change in a subsequent month. These inequities borne by the market's producers are contrary to the intent of the Federal order program's reliance on marketwide pooling—ensuring that all producers supplying the market are paid uniform prices for their milk regardless of how the milk of any single producer is used.

Exceptions filed by the AMPI Group, Eau Galle Cheese, WCMA, Family Dairies and Grande Cheese asserting that the re-pooling standards do not address the cause of de-pooling—price inversions—are unpersuasive. It is reasonable that the order contain pooling provisions intended to deter the disorderly conditions that arise when de-pooling occurs. Such provisions maintain and enhance orderly marketing. Accordingly, this final decision finds it reasonable to adopt provisions that limit the volume of milk a handler or cooperative may pool during the months of April through February to 125 percent of the total volume pooled by the handler or cooperative in the prior month and to 135 percent of the prior month's pooled volume during the month of March. Adoption of this standard will not prevent manufacturing handlers or cooperatives from electing to not pool milk. However, it should serve to maintain and enhance orderly marketing by encouraging participation in the marketwide pooling of all classified uses of milk.

A modification proposed by Dean in their exceptions to the Recommended Decision to lower the re-pooling standard in February to 115 percent is denied. This modification was not discussed at the hearing. The 125 percent re-pooling standard should adequately deter excessive de-pooling.

Exceptions filed by the AMPI Group and CGCC to more specifically define "unusual circumstances" are denied. This decision continues to adopt provisions that grant authority to the Market Administrator to waive the re-pooling standard for a bloc of milk due to unusual circumstances. This discretion has been previously granted to the Market Administrator to amend or waive other pooling standards and it is reasonable to make a similar accommodation here.

Consideration was given on whether de-pooling should be considered at a national hearing with other, broader national issues of milk marketing. However, each marketing area has unique marketing conditions and characteristics that have area-specific pooling provisions to address those specific conditions. Because of this, pooling issues are considered unique to each order. Historically, pooling issues have been addressed on an order by order basis and despite exceptions filed by the AMPI Group this final decision continues to find that it would be unreasonable to address pooling issues, including de-pooling, on a national basis. Other objections by the AMPI Group that the Department should take into account a manufacturer's cost of production are irrelevant in regards to the pooling standards of the order. The record does not support finding that manufacturers de-pool milk to recoup manufacturing costs that they otherwise cannot. The record clearly establishes that manufacturers de-pool their milk supply to avoid making a payment into the order's PSF. Nevertheless, manufacturing allowances, which are uniform in all Federal orders, are currently being addressed by the Department on a national basis (71 FR 545).

Some manufacturing handlers and cooperatives argued at the hearing and noted in exceptions to the Recommended Decision that their milk did perform in meeting the Class I needs during the month and this occurred before making their pooling decisions. They argue that the Class I market is therefore not harmed and that the intents and goals of the order program are satisfied. With respect to this proceeding and in response to these arguments, this decision finds that the practice of de-pooling undermines the intent of the Federal order program to assure producers uniform prices across all uses of milk normally associated with the market as a critical indicator of orderly marketing conditions.

Exceptions filed by Foremost, *et al.*, regarding the interpretation of "continuously pooled" and arguing that a producer should be allowed to de-pool some milk in each month without penalty is contrary to the goal of the Federal order program and would undermine the intent of the re-pooling standard. Handlers and cooperatives that de-pool purposefully do so to gain a momentary financial benefit (by avoiding making payments to the PSF) which would otherwise be equitably

[1] Official notice is taken of data and information published in Market Administrator Bulletins as posted on individual Market Administrator Web sites.

shared among all market participants. While the order's performance standards tend to assure that distributing plants are adequately supplied with fresh, fluid milk, the goals of marketwide pooling are undermined by the practice of de-pooling. Producers and handlers who regularly and consistently bear the costs of serving the Class I needs of the market will not equitably share in the additional value arising momentarily from non-fluid uses of milk. These same producers and handlers will, in turn, be required to share the additional revenue arising from higher-valued Class I sales in a subsequent month when class price relationships change. In regards to the re-pooling standard, "continuously pooled" will be interpreted to mean that a producer's milk is pooled every day on a Federal order.

The four proposals considered in this proceeding to deter the practice of de-pooling in the UMW order have differences. They all seek to address the market disorder arising from the practice of de-pooling. However, this decision does not find adoption of the two "dairy farmer for other market" proposals—Proposals 3 and 4—reasonable because they would make it needlessly difficult for milk to be re-pooled and because their adoption may disrupt prevailing marketing channels or cause the inefficient movement of milk. Likewise, Proposal 5, to restrict pooling in a month to 115 percent of the rior month's volume pooled by the handler, is not adopted. Adoption of this proposal would disrupt current marketing conditions beyond what the record justifies.

Therefore, this decision adopts Proposal 2 to limit the pooling of milk by a handler during the months of April through February to 125 percent of the total milk receipts the handler pooled in the prior month and to 135 percent of the prior month's pooled volume during the month of March because it provides the most reasonable measure to deter the practice of de-pooling.

A modification made by Midwest, *et al.*, in their exceptions to the Recommended Decision to exempt all milk delivered to distributing plants in excess of the previous month's pooled volume is adopted. It is clear from the record that the intent of re-pooling standards is to deter the practice of de-pooling while continuing to encourage shipments for Class I use. The Recommended Decision proposed that all distributing plants deliveries be exempt from the re-pooling standard. However, such a large exemption would continue to give rise to disorderly marketing conditions and could result in uneconomical movements of milk to distributing plants solely to circumvent the re-pooling standard. Exempting only distributing plant deliveries in excess of the previous month's pooled volume will still encourage service to the Class I market while maintaining order in the marketplace.

A request by CGCC in their exceptions to delay the implementation of the re-pooling standard until other new pooling standards are given the opportunity to operate is denied. The record clearly establishes that the practice of depooling gives rise to disorderly marketing conditions. The "other" new pooling standards that were considered at the hearing were adopted on an interim basis on July 1, 2005, and on a final basis on February 1, 2006. Additionally, further delay of adopting the re-pooling standards will result in disorderly conditions as already described in this decision when pricing conditions again offer incentives to de-pool milk.

B. Producer Definition

A proposal published in the hearing notice as Proposal 6, seeking to specify the length of time a dairy farmer may lose Grade A status before losing producer status on the order, is not adopted. Proposal 6, offered by Dean, would amend the *Producer* definition by explicitly stating that a dairy farmer may lose Grade A status for up to 21 calendar days per year before needing to requalify as a producer on the order. The UMW order currently does not specify the specific length of time a dairy farmer may lose Grade A status before needing to requalify as a producer on the order. Currently, a dairy farmer must deliver one day's milk production to a pool plant during the first month a producer is to be pooled in order to have their milk pooled and priced under the terms of the order.

A witness appearing on behalf of Dean testified in support of Proposal 6. The witness said the UMW order currently does not specify how long a dairy farmer who temporarily loses their Grade A status can retain producer status before they must requalify as a producer on the order. Proposal 6, the witness stated, sets a reasonable limit to the number of days a producer can lose Grade A status within a calendar year.

Comments filed on behalf of Dean in response to the Recommended Decision took exception to the Department's denial of Proposal 6 to define the term "temporary" in the producer milk definition. Dean maintained that a producer should bear the burden of establishing that their temporary loss of Grade A approval was not a maneuver designed to avoid the new re-pooling standards.

A witness appearing on behalf of Mid-West, *et al.*, testified in opposition to Proposal 6. The witness said that many situations could arise where a producer is unable to regain Grade A status in less than 21 days due to damages resulting from situations beyond their control. The current order language provides for waivers in pooling standards for pool plants due to such "acts of God" and, in the witness" opinion, is adequately provided for in the *Producer* definition of the current order language.

The *Producer* definition of the UMW order does not define the length of time a producer may lose Grade A status before needing to requalify for producer status on the order. The issue of qualifying for producer status is important since it determines which producers and which producer milk is entitled to share in the revenues arising from the marketwide pooling of milk on the UMW order.

The definition of "temporary" used by the Market Administrator has accommodated the Upper Midwest market by giving producers a reasonable amount of time to regain Grade A status without burdening the market with excessive touch-base shipments or recordkeeping requirements. Limiting the time period a producer can lose Grade A status would require handlers and the Market Administrator to track the producer's loss of Grade A status throughout the year to determine when the 21 day limit is reached.

Despite exceptions filed by Dean requesting an exact definition of "temporary", this decision continues to find that the additional touch-base shipments that would be required for a dairy farmer to requalify for producer status on the order would cause uneconomic shipments of milk. Additionally, the increased recordkeeping requirements would burden handlers without contributing to the goals and application of the proposed amendments to the pooling standards contained in this decision. Other amendments adopted in this decision that grant the Market Administrator authority to disqualify milk for pooling if it is found that the handler attempted to circumvent the re-pooling standards provide an adequate safeguard against pooling abuses. Accordingly, Proposal 6 is not adopted.

2. Administrative Assessment Rate

A proposal, published in the hearing notice as Proposal 7; seeking to increase the maximum assessment rate of the UMW order, is adopted. Specifically,

the maximum administrative assessment rate is increased from the current rate of 5 cents per cwt to 8 cents per cwt. At the time of the hearing, the administrative assessment rate of 5 cents per cwt applied to all milk pooled on the order and was the maximum assessment rate that could be charged. Adoption of this proposal will not increase the administrative assessment above the current rate but it will give the market administrator the ability to increase the assessment up to a maximum 8 cents per cwt, if necessary.[2]

According to the Market Administrator, Proposal 7 was offered because there is not sufficient milk volume being consistently pooled on the UMW order to generate adequate funding for the proper administration of the order. Administration of the UMW order generates substantial costs for the many services provided to UMW marketing area participants including pooling, auditing, gathering market information, and providing market services such as laboratory testing, explained the witness. The Market Administrator noted that there are also fixed expenses such as salaries and office leases and that the order must maintain a specified minimum level of operating reserves.

The Market Administrator stated that from 2000 to 2002, the amount of producer milk on the UMW order ranged from 1.7 to 1.95 billion pounds per month. According to the Market Administrator, this volume of pooled milk generated sufficient funds for the administration of the order for the 4-cent per cwt assessment rate being assessed on pooled milk during that time. However, the Market Administrator said, from July through November 2003 almost 6.2 billion pounds of producer milk was de-pooled which resulted in the loss of nearly $2.5 million in potential revenue for the administration of the order. According to the Market Administrator, this loss of revenue caused the assessment rate to be increased from 4 cents to 5 cents per cwt. The Market Administrator stressed that substantial de-pooling occurred again from March through May 2004 when nearly 4.7 billion pounds of producer milk was de-pooled.

The Market Administrator emphasized that the UMW order still services the de-pooled milk because handlers make decisions to de-pool their milk receipts after the end of the month after already utilizing many of the UMW order services. According to the Market Administrator, the UMW order must sometimes service an approximately 2 billion pound market per month while only collecting an assessment on 600 to 700 million pounds of milk. At the current assessment rate of 5 cents per cwt, noted the Market Administrator, the order needs approximately 1.5 billion pounds of pooled producer milk per month to operate and provide the services expected by market participants.

The Market Administrator said that actions to reduce operating costs have taken place but an increase in the maximum assessment rate is needed to ensure the proper administration of the order and to maintain necessary operating reserves. The Market Administrator explained that increasing the maximum administrative assessment rate to 8 cents per cwt would not necessarily be the actual rate that would be charged to pooling handlers. The Market Administrator stressed that the proposed 8-cent assessment rate is a maximum level, and the actual assessment rate charged would only be as high as needed to operate the order.

The Mid-West, *et al.*, brief expressed support of the Proposal 7 but emphasized that the assessment rate should be viewed as a maximum. The brief speculated that if Proposal 2 is adopted, the volume of milk pooled consistently will stabilize making it unnecessary to raise the assessment rate. The brief also discussed the option of having the assessment rate vary to ensure that milk which is consistently pooled does not pay for services on milk that is de-pooled and does not pay an assessment.

A witness appearing on behalf of Dean viewed Proposal 7 as an extra tax on those producers who already pay for the administration of the order every month, unlike those producers whose milk is de-pooled. The witness contended that if Proposal 3, 4, or 5 were adopted, the amount of milk being de-pooled on the UMW order would decrease significantly, thus giving the Market Administrator a more consistent income stream. However, asserted the witness, if the Department decided to increase the administrative assessment, Dean would encourage an amended provision that would charge a higher assessment on milk not pooled in the previous month.

Dean's post-hearing brief reiterated support for increasing the maximum administrative rate while maintaining that adoption of Proposal 3 would prevent the need to actually increase the administrative assessment rate. The brief proposed that if the administrative assessment rate is increased, the Market Administrator should be granted the authority to insulate continuously pooled producers from paying the increased assessment.

A witness appearing on behalf of WCA testified in opposition to Proposal 7. The witness asserted that the Market Administrator should use other means to address what the witness characterized as short-term funding declines.

A witness representing Oberweis Dairy also opposed adoption of Proposal 7 because it would increase costs to producers.

The hearing record reveals that fluctuations in the volume of milk pooled on the UMW order attributed to de-pooling can reduce the Market Administrator revenues to a level too low for proper administration of the order. At the current assessment rate of 5 cents per cwt, 1.5 billion pounds of pooled milk is needed to generate sufficient funds for the administration of the order. However, de-pooling has resulted in pooled volumes far below that needed to generate an adequate revenue stream.

The adoption of re-pooling standards to deter the de-pooling of milk should result in a more stable revenue stream for the administration of the UMW order. Nevertheless, it is reasonable to increase the maximum administrative assessment rate to ensure that the Market Administrator has the proper funds to carry out all of the services provided by the UMW order. While the maximum administrative rate is increased to 8 cents per cwt, the actual rate charged will only be as high as necessary to properly administer the order and provide the necessary services to market participants.

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.

[2] Official notice is taken of a letter from the UMW Market Administrator to UMW handlers, cooperatives and interested persons, dated September 28, 2005, that decreases the administrative assessment from 5 cents to 4 cents per cwt, effective with milk produced on or after September 1, 2005.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the UMW order was first issued and when it was 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 agreement and the order, 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 area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, 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, the marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register,** in accordance with the procedures for the conduct of referenda [7 CFR 900.300–311], to determine whether the issuance of the order as amended and hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be March 2006.

The agent of the Secretary to conduct such referendum is hereby designated to be H. Paul Kyburz, Upper Midwest Market Administrator.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

Dated: September 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the Recommended Decision issued by the Administrator, Agricultural Marketing Service, on February 15, 2006, and published in the **Federal Register** on February 22, 2006 (71 FR 9004), are adopted with one minor modification and shall be the terms and provisions of this order. The revised order follows.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for 7 CFR part 1030 is amended to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

2. Section 1030.13 is amended by adding a new paragraph (f), to read as follows:

§ 1030.13 Producer milk.

* * * * *

(f) The quantity of milk reported by a handler pursuant to either § 1030.30(a)(1) or § 1030.30(c)(1) for April through February may not exceed 125 percent, and March may not exceed 135 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the

pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to §__13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1030.13(f)(4), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

3. Section 1030.85 is revised to read as follows:

§ 1030.85 Assessment for order administration.

On or before the payment receipt date specified under § 1030.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1030.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this title.

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86 all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR Part 1030 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of March 2006, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, the contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 06–7496 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Wednesday,
September 13, 2006

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Central Marketing Area; Final Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A48; DA–04–06]

Milk in the Central Marketing Area; Final Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; final decision.

SUMMARY: This document is the final decision proposing to adopt amendments that increase supply plant performance standards, amend features of the "touch-base" provision, amend certain features of the "split plant" provision and decrease the diversion limit standards of the order. This decision also limits the volume of milk a handler can pool to 125 percent of the total volume of milk pooled in the previous month. This final decision is subject to producer approval.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov.*

SUPPLEMENTARY INFORMATION: This final decision adopts amendments that: (1) Increase supply plant performance standards to 25 percent for the months of August through February and to 20 percent for the months of March through July; (2) Require the non-pool side of a split plant to maintain nonpool status for 12 months; (3) Amend the "touch-base" feature of the order to require that at least one day's production of the milk of a dairy farmer be received at a pool plant in each of the months of January, February, and August through November, to be eligible for diversion to non-pool plants; (4) Lower the diversion limit standards by five percentage points, from 80 percent to 75 percent, for the months of August through February, and by five percentage points, from 85 percent to 80 percent for the months of March through July; and (5) Establish provisions that limit the volume of milk a handler may pool in a month to 125 percent of the volume of milk pooled in the prior month.

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 (the Act), as amended (7 U.S.C. 601–674), 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 of Agriculture (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 inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department'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 manufacturer 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.

During January 2005, the time of the hearing, there were 5,778 dairy producers pooled on, and 23 handlers regulated by, the Central order. Approximately 5,365 producers, or 92.9 percent, were considered "small businesses" based on the above criteria. Of the 23 handlers regulated by the Central order during January 2005, 11 handlers, or 47.8 percent, were considered "small businesses."

The adopted amendments regarding the pooling standards serve to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with and consistently serve the fluid needs of the Central milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs of the market and, by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk.

Criteria for pooling are established without regard to the size of any dairy industry organization or entity. 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 would be necessary.

This action does not require additional information collection that requires 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. 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.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not

duplicate, overlap, or conflict with any existing Federal rules.

Prior documents in this proceeding:

Notice of Hearing: Issued September 17, 2004; published September 22, 2004 (69 FR 56725).

Notice of Hearing Delay: Issued October 18, 2004; published October 13, 2004 (69 FR 61323).

Recommended Decision: Issued February 15, 2006; published February 22, 2006 (71 FR 9015).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The amendments set forth below are based on the record of a public hearing held in Kansas City, Missouri, on December 6–8, 2004, pursuant to a notice of hearing issued September 17, 2004, published September 22, 2004 (69 FR 56725), and a notice of a hearing delay issued October 13, 2004, published October 18, 2004 (69 FR 61323).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on February 15, 2006, issued a Recommended Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, conclusions and rulings of the Recommended Decision, with one minor modification, are hereby approved, adopted and are set forth herein. The material issues on the hearing record relate to:

1. Pooling Standards
   A. Performance standards for supply plants.
   B. The "Split plant" provision.
   C. System pooling for supply plants.
   D. Elimination of the supply plant provision.
   E. Standards for producer milk.
2. Establishing pooling limits.
3. Transportation and assembly credits.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

A. Performance Standards for Supply Plants

A portion of a proposal, published in the hearing notice as Proposal 1, seeking to increase supply plant performance standards by five percentage points, from 20 percent to 25 percent, for the months of August through February, and from 15 percent to 20 percent for the months of March through July, is adopted. A portion of another similar proposal, published in the hearing notice as Proposal 5, seeking to increase supply plant performance standards by 20 percentage points, from 15 percent to 35 percent, for the month of July, by 15 percentage points, from 20 percent to 35 percent, for the months of August through January and by 10 percentage points, from 15 percent to 25 percent, for the month of March is not adopted. Currently, the Central order requires a supply plant to ship 20 percent of its total receipts to a distributing plant during the months of August through February, and 15 percent of its total receipts during the months of March through July, in order for the total receipts of the supply plant to be pooled.

Proposal 1 was offered jointly by Dairy Farmers of America, Inc., (DFA), and Prairie Farms Cooperative (PF), hereafter referred to as DFA/PF. DFA/PF are member-owned Capper-Volstead cooperatives that pool milk on the Central order. Proposal 1 would increase the amount of milk a supply plant would be required to ship to a distributing plant by five percentage points, from 20 percent to 25 percent, for the months of August through February, and from 15 percent to 20 percent for the months of March through July, in order to pool all of its receipts on the Central order.

The proponents are of the opinion that current supply plant performance standards enable milk that does not demonstrate a consistent and reliable service to the Class I market to be pooled on the order. The proponents contend that the pooling of this additional milk is causing an unwarranted lowering of the order's blend price.

A witness appearing on behalf of DFA/PF testified in support of Proposal 1. The DFA/PF witness stated that increasing the volume of milk a supply plant is required to ship to a pool distributing plant in order to have all the receipts of the supply plant pooled, combined with other proposed changes to the Central order pooling provisions, will better identify milk ready, willing and able to service the fluid milk needs of the Central marketing area.

The DFA/PF witness testified that the proposed increase in the performance standards for supply plants would increase the blend price received by dairy farmers whose milk is pooled and priced on the Central order. The witness was of the opinion that an increase in the blend price will serve to attract and retain milk supplies that are otherwise shipped from the Central order area to neighboring marketing areas. The witness asserted that increasing supply plant performance standards will ensure that the Class I needs of the Central marketing area are being met.

The DFA/PF witness testified that current supply plant performance standards allow far more milk to be pooled on the Central order than is necessary. Relying on market administrator data, the witness noted that the projected Class I utilization of 50.1 percent, anticipated during Federal order reform for the consolidated marketing area, was not achieved. The witness added that the average Class I utilization in the Central marketing area has ranged from a low of 26 percent in 2002 to nearly 33 percent in 2003. The witness was of the opinion that these average Class I utilization levels demonstrate that reserve supplies of milk in the marketing area of 74 and 67 percent, respectively, for 2002 and 2003, far exceed the 49–50 percent reserve levels projected during Federal order reform. In addition, the witness noted that increased supply plant performance standards implemented in 2001 have not been effective in reducing the excess reserve supply of milk in the marketing area. The witness concluded that this data confirms that the current performance standards of the Central order provide opportunities for milk not regularly and consistently serving the Class I market to be pooled on the order.

The DFA/PF witness described concerns regarding the geography of the Central marketing area and explained that higher prices are received for milk in the bordering Southeast and Appalachian marketing areas. According to the witness, higher milk prices in the Appalachian and Southeast orders tend to attract milk from the Central marketing area and create localized supply imbalances within the eastern portion of the marketing area. The witness testified that increasing supply plant performance standards would deter milk originating from within the Central order boundaries from pooling on the Appalachian and Southeast orders. According to the witness this would tend to increase the

blend price paid to dairy farmers whose milk is pooled on the Central order.

A number of DFA member dairy farmers whose milk is pooled on the Central order testified in support of the portion of Proposal 1 that would increase supply plant performance standards. The dairy farmer witnesses were of the opinion that increasing supply plant performance standards will raise the level of Class I utilization and in turn, increase the blend price.

A witness from National All-Jersey (NAJ) representing AMPI, et al., (Associated Milk Producers Inc., Central Equity Cooperative, Land O' Lakes, Inc., First District Association, Foremost Farms USA, joined by Wells Dairy, Inc., Milnot Holdings and National All-Jersey), testified in opposition to the portion of Proposal 1 that would increase supply plant performance standards. NAJ is a national organization whose mission is to promote milk pricing equity and increase the value and demand for the milk produced by the Jersey breed. The NAJ witness was of the opinion that increasing supply plant performance standards would result in inefficient movements of milk and pass the costs of regulatory inefficiencies to consumers.

In their post hearing brief, DFA/PF reiterated their support for Proposal 1. The brief asserted that adoption of the portion of Proposal 1 that would increase supply plant performance standards would more accurately identify the milk of producers servicing the fluid needs of the market. According to the brief, increasing supply plant performance standards will increase the blend price for the producers who provide regular and consistent service to the Class I market. The DFA/PF brief reiterated support for not pooling milk which does not provide regular and consistent service to the fluid milk needs of the Central marketing area.

A brief from Select Milk Producers, Inc. (Select) and Continental Dairy Products, Inc. (Continental) supported adoption of the higher performance standard features of Proposal 1. Select and Continental are member-owned Capper-Volstead cooperatives whose milk is pooled on the Central order. The brief noted that adoption of higher performance standards would deter the pooling of milk on the order not servicing the fluid needs of the market.

A portion of Proposal 5, advanced by Dean Foods (Dean) (who described themselves as the largest processor and distributor of fluid milk in the United States, owning and operating nine distributing plants regulated by the Central order), would increase supply plant performance standards by 20 percentage points, from 15 percent to 35 percent, for the month of July, by 15 percentage points, from 20 percent to 35 percent, for the months of August through January and by 10 percentage points, from 15 percent to 25 percent, for the month of March. These proposed changes to supply plant performance standards are not recommended for adoption.

Two witnesses appeared on behalf of Dean in support of increasing supply plant performance standards. The witnesses were of the opinion that current supply plant performance standards are inadequate to assure a reasonable supply of fluid milk to the order's distributing plants. The witnesses were of the opinion that increasing supply plant performance standards as they proposed to the levels advanced would better attract an adequate milk supply for Class I use to the marketing area.

The first Dean witness testified that marketwide pooling and classified pricing are built on the assumption that Class I milk is the highest priced class and that pool revenues generated from Class I sales will attract a regular and consistent milk supply. The witness was of the opinion that current supply plant performance standards allow handlers to pool milk on the Central order that does not regularly and consistently serve the Class I market. According to the witness, low supply plant performance standards reduce the blend price paid to producers who consistently serve the needs of the Central order fluid market by allowing lower-valued milk to be pooled on the order.

The first Dean witness was of the opinion that adoption of higher performance standards would increase the volume of milk available to the Class I market. The witness further testified that if the USDA adopted higher performance standards for supply plants, adoption of Proposals 9 and 10, or Proposals 11, 12, and 13 would also be necessary. (Proposals 9, 10, 11, 12, and 13 are discussed later in this decision.)

The second Dean witness also was of the opinion that increasing supply plant performance standards would help to ensure that the fluid milk needs of the marketing area are being met. According to the witness, increasing supply plant performance standards would decrease the volumes of milk in lower-valued uses pooled on the order, thereby increasing the order's blend price. The witness testified that increasing supply plant performance standards would assist fluid milk handlers located in St. Louis and southern Illinois, who compete with handlers located in the Appalachian and Southeast orders, obtain needed milk supplies.

A brief submitted on behalf of DFA/PF opposed adoption of the level of performance standards for supply plants offered by Dean. DFA/PF noted that increasing supply plant performance standards to the levels advanced in Proposal 5 are unnecessarily high and are more restrictive than current market conditions could reasonably justify.

A brief submitted by AMPI, et al., reiterated the group's opposition to increased performance standards for supply plants as advanced by both Dean and DFA/PF. The brief highlighted the contention that increased performance standards for supply plants would unfairly penalize reserve suppliers of the marketing area by restricting their ability to share in the benefits of the marketwide pool.

B. The "Split Plant" Provision

A proposal from Dean, published in the hearing notice as Proposal 10, seeking to require the nonpool side of a split plant to maintain nonpool status for 12 months, is adopted. Another Dean proposal, published in the hearing notice as Proposal 9, seeking to eliminate the split plant provision is not adopted.

The current split plant provision provides for designating a portion of a pool plant as a nonpool plant provided that the nonpool portion of the plant is physically separate and operated separately from the regulated or "pool" side of the plant. Current provisions afford handlers operating a split plant the option of maintaining nonpool status or qualifying the nonpool side of the plant for pooling on a monthly basis.

The Dean witness testified that the nonpool side of a split plant can facilitate the pooling of milk that does not demonstrate a regular and consistent service to the fluid milk needs of the Central marketing area. The witness stated that if Proposal 10 was adopted, then Proposal 4, a proposal to eliminate all supply plant provisions, and Proposal 9, a proposal to eliminate split plants, would not be needed.

The Dean witness testified that Proposal 10 would require the nonpool side of a split plant to maintain nonpool status for a 12-month interval. According to the witness, adoption of this provision would deter pooling milk that does not regularly and consistently serve the Class I market. The witness added that Proposal 10 was advanced as an alternative to Proposal 9. The witness testified that as advanced in Proposal 9, a split plant could either be a pool plant

or a nonpool plant but not both. The witness stated that if USDA did not eliminate split plants then Dean would seek the adoption of Proposal 10.

In a post hearing brief, Select and Continental supported adoption of Proposal 10. The brief stated that Proposal 10 would deter the pooling of milk that does not regularly and consistently serve the Class I market. According to the brief, split plants should be prohibited from using milk receipts in the nonpool side of the plant from being pooled without demonstrating actual service to the Class I market. The brief expressed the opinion that reducing the volume of milk that a split plant could pool on the order from its nonpool side would tend to increase the Central order blend price.

The Select and Continental brief however, opposed the elimination of split plants as advanced in Proposal 9. The brief stated that requiring a split plant to elect non-pool status for 12 months for its nonpool side would provide sufficient incentive to prevent the pooling of excess milk through split plants.

DFA/PF commented on brief that Dean's Proposals 4–13 in general "go too far, too fast" given the current market conditions of the Central marketing area. According to the brief, DFA/PF contend that the adoption of the Dean proposals would not serve the needs of small dairy farms. The brief noted that some small producers may not have alternative markets for their milk if Dean's proposal to eliminate the split plant provision was adopted.

The AMPI, et al., brief opposed elimination of the split plant provision or requiring a 12-month pooling commitment from operators of split plants. Their opposition was based on the view that elimination of split plants, or imposing a 12-month pooling commitment for split plant operators, would unfairly restrict their ability to pool milk on the order.

C. System Pooling for Supply Plants

Three proposals presented by Dean, published in the hearing notice as Proposals 11, 12 and 13, and modified at the hearing, are not adopted. Proposal 11 would have eliminated providing for supply plant systems. Proposal 12 would have required a supply plant system to be operated by only one handler. Proposal 13 would have required that every plant participating in a system ship 40 percent of the system's qualifying shipment as if they had been operating as separate plants. Proposal 13 also would have prohibited using milk shipped directly from producer farms as qualifying shipments. Current Central order provisions provide the ability for 2 or more supply plants (subject to certain additional conditions) to operate as a "system" in meeting the qualifications for pooling in the same manner as a single plant.

The Dean witness testified that system pooling affords handlers the ability to link several supply plants together in an effort to qualify producer milk for pooling on the order. According to the witness, current system pooling provisions allow plants and farms close to distributing plants to deliver producer milk on behalf of more distant plants, thereby providing for the pooling of milk that does not regularly and consistently serve the Class I market. According to the witness, adoption of Proposal 11 would require plants to transfer milk to obtain and maintain eligibility for pool qualification. The witness stated that Proposal 11 would require every handler to pool their producers on the basis of actual deliveries to distributing plants.

The Dean witness testified in support of Proposal 12 in the event supply plant systems were not eliminated as advanced in Proposal 11. According to the witness, Proposal 12 would limit the use of supply plant systems to a single handler rather than multiple handlers as currently provided in the order. The witness testified that allowing only a single handler to qualify pool supply plants through system pooling provisions would ensure that each handler is willing and able to demonstrate regular and consistent service to the fluid milk needs of the Central marketing area.

The Dean witness testified that Proposal 13 would require each plant in a supply plant system to meet at least 40 percent of the total performance standard required for pooling. According to the witness, Proposal 13 is similar to Proposal 11 in that it would prohibit the use of milk shipped directly from producer farms to qualify a supply plant system. However, the witness stated that Proposal 13 also would require every supply plant in a supply plant system to ship a significant volume of milk to the fluid market. The witness noted that qualification of distant milk would be discouraged by adoption of Proposals 12 and 13 since the use of milk shipped directly from producer farms for qualification purposes would be prohibited. The Dean witness expressed preferences for the adoption of Proposal 11 over Proposal 12, and adoption of Proposal 12 over Proposal 13.

A witness from DFA/PF expressed opposition to Proposals 11, 12, and 13, because their adoption would eliminate or overly restrict the operation of supply plant systems. On brief, DFA/PF noted that, as with elimination of the split plant provision, some small producers may not have alternative markets for their milk if supply plant systems are eliminated or are made overly restrictive.

In a post hearing brief, AMPI, et al., reiterated opposition to Proposals 11, 12, and 13. The AMPI, et al., brief opposed restrictions on pooling milk of producers ready, willing, and able to serve the Class I needs of the Central marketing area. The brief opposed elimination or restriction of supply plant systems contending such action would eliminate markets for the milk of small dairy farmers without alternative markets available.

Select and Continental also opposed adoption of Proposals 11, 12 and 13 in their post-hearing brief. The brief opposed eliminating or restricting supply plant systems on the basis that no verifiable evidence was presented demonstrating that supply plant systems do not provide consistent and reliable service to the Class I market.

D. Elimination of the Supply Plant Provision

A proposal by Dean, published in the hearing notice as Proposal 4, seeking to eliminate the supply plant provision, is not adopted.

A Dean witness characterized Proposal 4 as a preferred alternative to increasing supply plant performance standards sought in Proposals 1 and 5. The witness explained that if Proposal 4 is adopted, then Proposals 9–13, seeking to increase performance standards for supply plants and supply plant systems would not be needed. The witness testified that while the role of supply plants in the milk order system is to supply the needs of distributing plants, the milk supply of plants for the Central marketing area is only of residual concern because it provides an outlet for reserve producers when their milk is not needed for fluid use.

The Dean witness testified that supply plants no longer represent the most efficient means for supplying distributing plants. According to the witness, supply plants play a minor role in the Central marketing area, representing less than 5 percent of the milk shipped to distributing plants. According to the witness, milk assembled from farms must be received at a supply plant, cooled and stored, and reloaded and delivered to distributing plants. The witness stated that the increased handling of milk through supply plants reduces its

quality compared with milk that is direct delivered from farms. The witness said that direct delivery from farms to distributing plants is a superior method for ensuring that milk pooled on the order serves the Class I needs of the market. The witness was of the opinion that supply plants inappropriately facilitate pooling milk that does not regularly and consistently serve the Class I market.

A witness representing NAJ testified in opposition to the elimination of supply plants. According to the witness, elimination of the supply plant provision also would reduce the ability of dairy farmers to pool milk on the Central order. The witness was of the opinion that eliminating the supply plant provision would have a negative impact on the income of the cooperatives represented by NAJ. The witness stated that supply plants provide a legitimate means by which producers continue to serve the Class I market of the Central marketing area.

A witness for DFA/PF testified in opposition to the elimination of supply plants. According to the witness, provisions for supply plants should be provided because they continue to play a role in supplying milk to distributing plants. DFA/PF reiterated this opposition to Proposal 4 in their post-hearing brief. AMPI, et al., joined DFA/PF in opposing this proposal.

E. Standards for Producer Milk

Several amendments to the *Producer milk* provision of the Central order are adopted. The amendments were largely contained in Proposal 1. Changes to the producer milk provision are necessary to more accurately identify the milk of those dairy farmers that are regularly and consistently serving the Class I needs of the market. The adopted amendments include: (1) Increasing the touch-base standard so that one day's milk production of a dairy farmer must be delivered to a pool plant in each of the months of January, February and August through November for the milk of the dairy farmer to be eligible for diversion to a nonpool plant; and (2) Decreasing the diversion limit standards to not more than 75 percent of receipts during August through February, and not more than 80 percent of receipts for March through July.

The feature of Proposal 1 to geographically limit the location of nonpool plants eligible to receive diverted milk to those plants in States located in the marketing area and New Mexico is not adopted.

Proposal 1 increases the touch-base standard to require the equivalent of at least one days' milk production of a dairy farmer be physically received at a pool plant in each of the months of January, February and August through November. If the touch-base standard is not met, the milk would have to be physically received at a pool plant in each of the months of March through July and December. The current touch-base standard of the Central order specifies a one-time only delivery standard.

The DFA/PF witness explained that the current one-time touch-base standard of the Central order should be replaced by the strengthened touch-base feature of Proposal 1. The witness continued that the months of January, February, and August through November, were added to the proposed touch-base standard to correspond with periods of higher Class I demands. The DFA witness explained that requiring one day's milk production of a producer to be delivered to a pool plant in each of these six months should increase milk available for Class I use. The DFA/PF witness was opposed to any touch-base standard of more than one day per month for the six months advanced by the proposal, as being overly restrictive.

The DFA/PF witness testified that increasing the touch-base standard and lowering the diversion limit standards of the Central order will help to ensure that milk that could not consistently and reliably demonstrate service to the Class I market is not pooled on the order. The witness testified that the pooling of such milk on the order reduces the blend price paid to producers who consistently and reliably serve the Class I needs of the Central marketing area.

The DFA/PF witness acknowledged that amendments to the pooling provisions of the Central order implemented in 2003 reduced the volume of milk pooled that was not serving the Class I needs of the market. However, the witness noted that those changes did not contemplate that milk from the Mountain States might seek to be pooled on the Central order. The witness was of the opinion that the current touch-base and diversion limit standards were inadequate to prevent the sharing of Class I revenue with the milk of producers that could not possibly serve the Class I market of the Central marketing area. The witness was of the opinion that if milk located far from the Upper Midwest marketing area [1] and currently pooled on the Upper Midwest order were to seek an alternative order on which to pool, the current pooling standards of the Central order make it the most likely candidate among Federal milk orders. The witness testified that the current pooling standards of the Central order can not adequately prevent such milk from pooling because the pooling standards are too liberal. According to the witness, this milk can not demonstrate regular and reliable service to the Class I market.

The DFA/PF witness illustrated that milk produced in Idaho, for example, cannot profitably be delivered to distributing plants located in the Central marketing area. According to the witness, milk produced in this region would need to travel more than 680 miles for delivery at the nearest distributing plant of the order located in Denver. The witness asserted that the current one-time touch-base standard combined with the existing diversion limit standards of the order provide the incentive for milk located far from the marketing area to be profitably pooled on the order which otherwise would not be economically feasible.

The witness provided a scenario where a single 50,000-pound load of milk delivered once to Denver could cause one million pounds of milk to be pooled on the Central order through the diversion process but delivered to plants far from the marketing area. According to the witness' calculations, a 50,000-pound load of milk delivered once to a pool plant located in Denver would incur a loss $4,640. However, the witness explained that each additional load of milk, up to one million pounds now qualified for diversion to nonpool plants located near producers farms, would return an additional $7,081. The witness emphasized that the milk portrayed in this example would rely solely on the liberal pooling standards of the order. The milk would never consistently and reliably supply the Central marketing area.

In another scenario, the DFA/PF witness illustrated the impact of 25 million pounds of milk a month shipped from southern Idaho that would be pooled on the Central order through the diversion process by meeting the one-time touch-base standard during the months of November 2003–January 2004. The witness explained that pooling this volume of milk would have reduced the Central order's blend price by $0.25 per cwt.

In a third scenario, the DFA/PF witness demonstrated how milk located in southern Idaho can be pooled every month through the diversion process by meeting the one-time touch-base standard of the Central order. The

[1] Amendments to the pooling provisions of the Upper Midwest order were implemented on February 1, 2006 (70 FR 73126). See Final Partial Decision published in the **Federal Register**, October 5, 2005 (70 FR 58086).

witness said that this scenario was based on the 58-month period of January 2000 to October 2004. The witness explained that this scenario assumes that a single 50,000-pound load of milk was shipped to a distributing plant located in the Central marketing area and all other milk diverted to nonpool plants are located in Idaho. The witness testified that the shipping handler would receive a positive return averaging $0.348 per cwt per month ($201,000 over the 58-month period) on the total volume of milk pooled. The DFA/PF witness concluded that from their scenarios, the current Central order diversion limit and touch-base standards encourage pooling of milk that can not and does not regularly and consistently supply the Class I needs of the market.

A brief submitted by Select and Continental supported the producer milk amendments called for in Proposal 1, except for limiting diversions to nonpool plants that are located in the States comprising the Central marketing area. The brief noted that the goal of the Federal order program should be to ensure that milk pooled on the order actually serves the Class I market.

Features of Proposal 5, offered by Dean, regarding diversion limits and touch-base standards are not adopted. Proposal 5 seeks to raise the touch-base standard to 4 days in each month of the year and decrease diversion limits to 65 percent for the months of July through January, and 75 percent during the months of February through June. A Dean witness stated that increasing the touch base requirement would ensure the increased availability of milk to serve the needs of the fluid market. The witness testified that adopting higher touch-base and lower diversion limit standards would ensure that pool plants would keep their facilities operating at a higher level of output than would be the case if more milk were diverted.

The diversion limit standard feature of Proposal 5 was modified by Dean on brief. The modification specified that milk would not be eligible for diversion "unless" (instead of "until") milk has been physically received as producer milk at a pool plant, and the exception for a loss of Grade A status was changed to a period not to exceed 21 rather than 10 days in a calendar year.

The witness from NAJ, on behalf of AMPI, et al., testified in opposition to increasing the touch-base and lowering the diversion limit standards as advanced. The witness stated that the proposed lowering of diversion limits together with increasing supply plant performance standards as called for in Proposal 5 would have negative consequences for dairy farmer income, if adopted. The NAJ witness was of the opinion that the aim of Proposal 5 was to deter milk from being pooled on the order. It was the witness' opinion that the adoption of Proposal 5 would create marketing inefficiencies and additional costs for members of NAJ. The witness also was of the opinion that the adoption of Proposal 5 would discourage available milk supplies in the milkshed from pooling on the Central order.

NAJ and AMPI, et al., also submitted exceptions to increasing the touch-base standard and lowering the diversion limit standards in the recommended decision. NAJ and AMPI, et al., reaffirmed their opinion that adoption of a one day touch-base standard along with a decrease in diversion limits would unnecessarily burden their members.

Central Equity, a dairy farmer cooperative located in Missouri, also took exception to increasing the touch-base standard. One hundred and fourteen Central Equity dairy farmer members submitted a form-letter detailing the difficulties the cooperative would endure in meeting the increased touch-base standard. The cooperative members were of the opinion that the recommended touch-base standard would significantly increase hauling costs and require the cooperative to pay pooling fees for access to pool plants. The cooperative added that they are not opposed to increased performance standards in general, but are concerned with difficulties that small cooperatives and independent dairy farmers face in obtaining access to pool facilities.

Exceptions to increasing the touch-base standard and lowering the diversion limit standard were also received from Wells Dairy (Wells). Wells Dairy is an Iowa based dairy products manufacturer. Wells was of the opinion that the recommended touch-base standard would be difficult for certain dairy farmers and dairy farmer cooperatives to meet. Wells noted that increasing the touch-base standard and lowering the diversion limit standard will unduly burden dairy farmers and cooperatives that have limited access to pooling facilities served under full-supply contracts.

The record reveals that distributing plants in certain areas of the marketing area are having difficulty obtaining reliable milk supplies. Because this decision does not adopt transportation credits (discussed later in this decision) for the movement of milk to distributing plants, increasing the performance standards for supply plants is a reasonable measure to better assure that all distributing plants of the order are adequately supplied. Additionally, other measures are being taken to prevent the pooling of milk which can not demonstrate regular and consistent service in supplying the Class I needs of the marketing area. The pooling of such milk results in an unwarranted lowering of the blend price returned to those producers who demonstrate regular and consistent service in supplying the Class I needs of the market.

The pooling standards of all Federal milk marketing orders, including the Central order, are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and provide the criteria for determining the producer milk that has demonstrated service in meeting the Class I needs of the market and thereby receive the order's blend price. The pooling standards of the Central order are represented in the *Pool plant, Producer,* and the *Producer milk* provisions of the order and are based on performance, specifying standards that if met, qualify a producer, the milk of a producer, or a plant to share in the benefits arising from the classified pricing of milk.

Pooling standards that are performance-based provide the only viable method for determining those producers eligible to share in the marketwide pool. It is usually the additional revenue generated from the higher-valued Class I use of milk that adds additional income to producers, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should share in the returns arising from higher-valued Class I sales. An important objective of pooling standards is identifying the milk that serves the fluid milk needs of the market, a feature which if ineffective can result in pooling milk that is not providing such service

Record evidence supports finding that certain features of pooling standards of the Central order relating to performance standards for supply plants, diversion limits, touch-base, and split plants need to be amended given the pooling of milk that does not regularly and consistently serve the Class I needs of the Central marketing area.

The most recent amendments to the Central order (published in the August 27, 2003, Final Decision (68 FR 51640)) intended to correct similar inadequacies of the supply plant pooling provisions and diversion limit standards for the consolidated Central order. However, the record reveals that the combination and features adopted for pool plants in

2003 have not been as effective as intended to reasonably assure that only milk of producers who regularly and consistently serve the Class I market is pooled on the order.

Record evidence reveals that the performance and pooling standards of the Central order are inadequate to ensure that the benefits of consistently and reliably servicing the Class I market are shared equitably among those producers who actually bear the costs of serving that market. The record evidence demonstrates that milk distant from the Central marketing area does not provide reasonable service to the Class I market but can be pooled on the order because of current pooling standards. This evidence shows that pooling large volumes of milk at lower class-use values has lowered the order's blend price. Specifically, the record shows that the current one-time touch-base standard and the diversion limit standard of the order do not properly identify the milk of producers who reliably and consistently serve the Class I market.

The record demonstrates that current pooling standards of the Central order make it the most logical order for distant milk—such as in Southern Idaho—to be pooled. The record shows that the current performance standards of the Central order are insufficient to prevent milk from qualifying for pooling while not performing service to the Class I market.

In addition, the record provides evidence that milk produced in areas distant from the marketing area cannot profitably be delivered to distributing plants in the Central marketing area. However, the current liberal touch-base and diversion limit standards make pooling on the Central order attractive while reducing the blend price of the order for those producers who actually provide service to the Class I market.

Record evidence reveals the continued importance of supply plants for producers whose milk provides consistent and reliable service to the Class I market. According to the record, opposition to restrictive supply plant standards beyond those advanced in Proposals 1 and 10 was based on the continued need for supply plant service to distributing plants in the marketing area. Similarly, the record reveals a consensus among producers concerning their continued support for supply plant systems as an integral part of milk supply networks in the Central marketing area. Opposition to the elimination or additional restriction of supply plants and supply plant systems in Proposals 4, 11, 12, and 13, is revealed by the record to be based on the continued importance of supply plant systems to supplying the Class I market.

Record evidence from proponents and opponents of limiting diversions to supply plants located in the marketing area or New Mexico supports concluding that dairy farmers in some regions of the Central marketing area rely on supply plants to market their milk. In addition, the record contains evidence that supply plants and supply plant systems continue to provide necessary service to the Class I market without regard to the location of those plants or plant systems. According to the record, distant milk may use the pooling standards of the Central order as a means to pool milk that will never perform service to the Class I market. However, the record does not show clearly that milk diverted to supply plants outside the marketing area or New Mexico cannot be part of the legitimate reserve of the market which may require additional pooling safeguards. Performance rather than plant location continues to be the standard for identifying the milk of producers who should share in the benefits of pooling. In that regard, this decision finds agreement with the opponents of limiting diversions to supply plants located within the marketing area or New Mexico, as sought in Proposal 1.

Despite the comments by AMPI et al., NAJ, Central Equity and Wells Dairy, this decision continues to find that several of the performance standards advanced in Proposal 1 are reasonable in light of other adopted changes to the order's pooling provisions. The combination of amendments increasing supply plant performance standards, modifying the split plant provision, reducing diversion limit standards and increasing the touch-base standard are appropriate in light of denying proposals to establish transportation and assembly credits. The adopted amendments should more accurately identify the milk of those producers that provide a consistent and reliable supply of milk to the Class I needs of the Central marketing area and assure that distributing plants are adequately supplied.

The record indicates that milk located either inside or outside the marketing area can be reported as diverted milk by a pooled handler. This milk is eligible to receive the order's blend price. Under the current pooling provisions, this can occur after a one-time delivery to a Central marketing area pool plant. After the initial delivery, however, such milk need never again be physically delivered to a Central marketing area pool plant. The record evidence confirms that usually this milk is delivered to a nonpool plant located nearer the farms of producers located far from the marketing area who cannot serve the Class I market. It is therefore appropriate to amend the order's diversion provisions to ensure that milk pooled through the diversion process is part of the legitimate reserve supply of the pool plant from which it was diverted. This standard is a necessary safeguard against excessive milk supplies becoming associated with the market through the diversion process to prevent the unwarranted reduction of the order's blend price.

However, the record does not support finding that diversions to plants not located within the marketing area or New Mexico cannot be part of the legitimate reserve supply for the marketing area. In this regard, the proposed limitation on diversions based on plant location is not reasonable. Based on the record, the proposed increase in the touch-base standard and lowering of the diversion limitation standard is adequate to ensure that milk consistently and reliably serving the Class I market is properly identified. Accordingly, the portion of Proposal 1 seeking to limit diversions to plants located in the marketing area or New Mexico is not adopted.

Exceptions received by AMPI, et al., NAJ, Central Equity and Wells Dairy opined the difficulties that certain cooperatives and independent dairy farmers face in meeting an increased touch-base standard. However, this decision continues to find that that the touch-base standard should be amended so that at least one days' milk production of a dairy farmer is physically received at a pool plant during January, February, and August through November for the milk of the dairy farmer to be eligible for diversion to a nonpool plant. Amending the touch-base standard is widely supported by the record and should reduce the ability of milk not performing a consistent and reliable service to the Class I market from being pooled. The months of January, February, and August through November are, according to the record, the high demand months for fluid milk. Adoption of the one-day touch base standard for each of these six months will more properly identify the milk of those producers serving the market's Class I needs. Accordingly, exceptions received from AMPI, et al., NAJ, Central Equity and Wells Dairy are found to not be compelling.

Record evidence does not support finding that the 4-day touch base

standard advanced by Dean would improve the identification of dairy farmers whose milk serves beyond what a 1-day standard would provide within the context of current marketing conditions. This will be reinforced by the other adopted amendments to the order's pooling standards.

The amendment requiring a handler to make a 12-month commitment if opting to create a split plant will ensure that the milk shipped from the pool side of a split-plant serves the Class I market. This amendment (Proposal 10, advanced by Dean) is a reasonable modification of the split plant feature for supply plants to provide for orderly marketing and maintain the integrity and intent of the order's performance standards. The proposal retains the principle that milk regularly and consistently demonstrating service to the Class I needs of the market should benefit from being pooled on the order. Accordingly, Proposal 10 is adopted.

The Federal milk order system recognizes that there are costs incurred by producers in servicing an order's Class I market. The primary reward to producers for performing such service is receiving the order's blend price. Taken as a whole, the amended pooling provisions will ensure that milk seeking to be pooled consistently demonstrates service in meeting the marketing area's Class I needs. Consequently, adoption of these amended pooling provisions will provide for more equitable sharing of revenue generated from Class I sales among those producers who bear those costs and assure Class I handlers of a regular and reliable supply for fluid use.

2. Establishing Pooling Limits

Preliminary Statement

Federal milk marketing orders rely on the tools of classified pricing and marketwide pooling to assure an adequate supply of milk for fluid (Class I) use and to provide for the equitable sharing of the revenues arising from the classified pricing of milk. Classified pricing assigns a value to milk according to how the milk is used. Regulated handlers who buy milk from dairy farmers are charged class prices according to how they use the farmer's milk. Dairy farmers are then paid a weighted average or "blend" price. The blend price that dairy farmers are paid for their milk is derived through the marketwide pooling of all class uses of milk in a marketing area. Thus each producer receives an equal share of each use class of milk and is indifferent as to the actual Class for which the milk was used. The Class I price is usually the highest class price for milk. Historically, the Class I use of milk provides the additional revenue to a marketing area's total classified use value of milk.

The series of Class prices that are applicable for any given month are not announced simultaneously. The Class I price and the Class II skim milk price are announced prior to the beginning of the month for which they will be effective. Class prices for milk in all other uses for the month are not determined until on or before the 5th day of the following month. The Class I price is determined by adding a differential value to the higher of either an advanced Class III or Class IV value. These values are calculated based on formulae using National Agricultural Statistics Service (NASS) survey prices of cheese, butter, and nonfat dried milk powder for the first two weeks of the prior month. For example, the Class I price for August is announced in late July and is based on the higher of the Class III or IV value computed using NASS commodity price surveys for the first two weeks of July.

The Class III and IV prices for the month are determined and announced after the end of the month based on the NASS survey prices for the selected dairy commodities during the month. For example, the Class III and IV prices for August are based on NASS survey commodity prices during August. A large increase in the NASS survey price for the selected dairy commodities from one month to the next can result in the Class III or IV price exceeding the Class I price. This occurrence is commonly referred to by the dairy industry as a "class price inversion." A producer price inversion generally refers to when the Class III or IV price exceeds the average classified use value, or blend price, of milk for the month. Price inversions have occurred with increasing frequency in Federal milk orders since the current pricing plan was implemented on January 1, 2000, despite efforts made during Federal Order Reform to reduce such occurrences. Price inversions can create an incentive for dairy farmers and manufacturing handlers who voluntarily participate in the marketwide pooling of milk to elect not to pool their milk on the order. Class I handlers do not have this option; their participation in the marketwide pool is mandatory.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Classes. In essence, the PPD is the dairy farmer's share of the additional/reduced revenues associated with the Class I, II and IV milk pooled in the market. If the weighted average price of Class I, II and IV milk in the pool is greater than the Class III price, then dairy farmers receive a positive PPD. However, a negative PPD can occur if the value of the Class III milk in the pool exceeds the value of the remaining classes of milk in the pool. This can occur as a result of the price inversions discussed above.

The Central Federal order operates a marketwide pool. The Order contains pooling provisions which specify criteria that, if met, allow dairy farmers to share in the benefits that arise from classified pricing through pooling. The equalization of all class prices among handlers regulated by an order is accomplished through a mechanism known as the producer settlement fund (PSF). Typically, Class I handlers pay the difference between the blend price and their use-value of milk into the PSF. Manufacturing handlers typically receive a draw from the PSF, usually the difference between the Class II, III or IV price and the blend price. In this way, all handlers pay the class value for milk and all dairy farmer suppliers receive at least the order's blend price.

When manufacturing class prices of milk are high enough to result in a use-value of milk for a handler that is higher than the blend price, handlers of manufacturing milk may choose to not pool their milk receipts. Opting to not pool their milk receipts allows these handlers to avoid the obligation of paying into the PSF. The choice by a manufacturing handler to not pool their milk receipts is commonly referred to as "de-pooling". When the blend price rises above the manufacturing class use-values of milk these same handlers again opt to pool their milk receipts. This is often referred to as "re-pooling". The ability of manufacturing handlers to de-pool and re-pool manufacturing milk is viewed by some market participants as being inequitable to both producers and handlers.

The "De-pooling" Proposals

Proponents are in agreement that milk marketing orders should contain provisions that will tend to deter the practice of de-pooling. Four proposals intending to deter the de-pooling of milk were considered in this proceeding. The proposals offered different degrees of deterrence against de-pooling by establishing limits on the amount of milk that can be re-pooled. The proponents of these four proposals are generally of the opinion that de-pooling erodes equity among producers and handlers, undermines the orderly marketing of milk and is detrimental to the Federal order system.

Two different approaches to deter de-pooling are represented by these four

proposals. The first approach, published in the hearing notice as Proposals 2 and 8, addresses de-pooling by limiting the volume of milk a handler can pool in a month to a specified percentage of what the handler pooled in the prior month. The second approach, published in the hearing notice as Proposals 6 and 7, addresses de-pooling by establishing what is commonly referred to as a "dairy farmer for other markets" provision. These proposals would require milk of a producer that was de-pooled to not be able to be re-pooled by that producer for a defined time period. All proponents agreed that while none of the proposals would completely eliminate de-pooling, they would likely deter the practice.

Of the four proposals received that would limit de-pooling, this decision adopts Proposal 2, offered by DFA/PF. Specifically, adoption of the proposal will limit the volume of milk a handler can pool in a month to no more than 125 percent of the volume of milk pooled in the prior month. Milk diverted to nonpool plants in excess of this limit would not be pooled, and milk shipped to pool distributing plants and allocated as Class I in excess of the volume shipped to pool distributing plants in the prior month will not be subject to the 125 percent limitation. The 125 percent limitation may be waived at the discretion of the Market Administrator for a new handler on the order or for an existing handler whose milk supply changes due to unusual circumstances.

As published in the hearing notice, Proposal 8, offered by Dean Foods, addresses de-pooling in a similar manner as Proposal 2, but would establish a limit on the total volume of milk a handler could pool in a given month to 115 percent of the volume that was pooled in the prior month. This proposal was modified at the hearing to allow for pooling the milk receipts of a new handler on the order without volume restrictions.

As published in the hearing notice, Proposals 6 and 7, also offered by Dean Foods would address de-pooling by establishing defined time periods during which de-pooled milk could not be pooled. Proposal 6 essentially would require an annual pooling commitment by handler to the market. Under Proposal 6, if the milk of a producer is de-pooled in a month, then the milk of the producer could not re-establish eligibility for pooling on the order during the following eleven months unless ten days milk production was delivered to a pool distributing plant. Under Proposal 6, handlers that de-pool milk have limited options to return milk to the pool, either shipping ten days milk production of a producer to a pool distributing plant or waiting eleven months for eligibility to re-pool.

Under Dean's Proposal 7, a handler that de-pools milk cannot re-pool for a 2 to 4 month time period, depending on the month in which de-pooling occurred. Proposal 7 also provides the option to return milk to the pool by shipping ten days milk production of a producer to a pool distributing plant. Proposals 6 and 7 were modified at the hearing.

A witness appearing on behalf of DFA/PF testified in support of Proposal 2 and in general opposition to the practice of de-pooling. The witness testified that adoption of Proposal 2 would minimize the practice of de-pooling since not all the milk that was de-pooled could immediately return to the pool in the following month. The witness noted that both DFA and Prairie Farms de-pool milk when advantageous but stressed that the practice of de-pooling and re-pooling is detrimental to the Federal order system.

The DFA/PF witness testified that restricting the pooling of milk on the basis of prior performance is not a new concept in Federal milk marketing order provisions. The witness referenced the "dairy farmer for other markets" provision currently in place in the Northeast order as an example of pooling provisions based on prior performance. The witness noted that Proposal 2 is similar to a "dairy farmer for other markets" provision as it limits pooling based on the handler's previous month's pooled volume. The DFA/PF witness speculated that the manner in which Proposal 2 attempts to reduce the practice of de-pooling is too drastic for some and not strong enough for others. Nevertheless, adoption of Proposal 2, the witness stressed, would provide an appropriate economic consequence to discourage those entities that might otherwise choose to de-pool.

The DFA/PF witness was of the opinion that since the purpose of Federal milk marketing orders are to ensure an adequate supply of milk for the fluid market, equitably share pool proceeds, and promote orderly marketing, milk order provisions should attract milk to its highest valued use when needed and provide for milk to clear the market when not needed in higher-class uses. Since Class I milk cannot be de-pooled, the witness noted, Class I handlers can be at a disadvantage to handlers who can de-pool during periods of price inversions. Class I handlers are unable to maintain a competitive pay price for their milk supply, the witness explained, since Class II, III or IV handlers who de-pool may pay dairy farmers a higher price for their milk. The witness stressed that when the Class I price is not high enough to attract milk from other uses, disorderly conditions arise in the marketplace.

The DFA/PF witness asserted that when a Class II, III or IV handler de-pools milk, inequities arise for the dairy farmers who supplied the de-pooling handler. In the absence of provisions to discourage de-pooling, the witness explained, de-pooling becomes a rational economic practice since only Class I milk is required to be pooled and its value shared through the order's blend price.

The DFA/PF witness testified that the combination of de-pooling with recent increasingly volatile milk prices requires immediate regulatory measures to mitigate the disorderly effects that de-pooling has on market participants. The witness cited market administrator data showing that since implementation of Federal order reform in 2000 there have been 43 months when opportunities to de-pool existed for the Central order.

Relying on statistics provided by the market administrator, the witness illustrated that in April 2004 a handler in the Central order choosing to de-pool was able to pay over $4.00 per hundredweight (cwt) more for milk than a Class I handler unable to de-pool because the Class III price was $19.66 and the uniform price was $15.64. The witness characterized pricing differences of this magnitude as disruptive, disorderly and a competitive disadvantage for any Class I handler. When similarly situated handlers face disparate costs in procuring a supply of milk, the witness added, producers in common procurement areas are negatively affected. The witness asserted that this is a disorderly marketing condition.

Two DFA member dairy farmers from Nebraska testified in support of Proposal 2. Both witnesses maintained that they received smaller milk checks than they otherwise would have received if milk had not been de-pooled. The witnesses added that when fluid milk bottlers experience difficulties in obtaining a milk supply, the costs to supply that milk should be passed on to consumers, not dairy farmers. The witnesses also stated that in order to equalize returns from all classified uses of milk, there needs to be a commitment to have all milk pooled every month of the year.

Two DFA member dairy farmers from Missouri also testified in support of Proposal 2. The witnesses noted that de-pooling amplifies the problem of

negative PPD's. The witnesses were of the opinion that de-pooling creates differences in pay prices among similarly located dairy farmers whose milk is pooled in the Central market, and that different pay prices represent a disorderly marketing condition. The witnesses stated that in order to enjoy the additional funds usually generated by the Class I market, handlers should be required to demonstrate that their milk is available for the Class I market by not de-pooling.

A dairy farmer from Kansas testified in opposition to the practice of de-pooling. The witness was of the opinion that a commitment to serve the Class I market should be required in order to share in the blend price. The witness stressed that in order to share in the returns generated from the marketwide pool handlers and cooperatives should participate in the pool every day not only when it may be profitable.

A witness testified on behalf of Dean in support of Proposal 8. The witness explained that Proposal 8 addresses the practice of de-pooling in a similar manner as Proposal 2 but would limit the pooling of milk to 115 percent of the volume that was pooled in the prior month. The witness was of the opinion that a monthly pooling limit would discourage the de-pooling of milk since the greater the proportion of a handler's milk that is de-pooled, the longer it will take to re-pool that milk. Accordingly, the witness concluded, those who benefit the most from de-pooling also would have the most difficulty in attempting to regain pool status.

A witness for Dean also testified in support of Proposals 6 and 7 which would establish defined time periods during which de-pooled milk could not be re-pooled. The witness testified that Dean prefers adoption of Proposal 6 over Proposal 7. Proposal 6 would impose a 12-month period during which de-pooled milk could not again be pooled while Proposal 7 would establish a 2 to 4 month period during which de-pooled milk could not again be pooled. Under Proposal 6, the witness explained, if the milk of a producer were de-pooled, the milk could only reassociate before the annual commitment period if ten days production of the milk of the producer was delivered to a pool distributing plant. According to the witness, Proposal 7 would provide an option for milk that had been de-pooled to return to the pool during certain specified months of the year depending on when the milk was de-pooled or by shipping ten days production of the milk of a producer to a pool distributing plant.

The Dean witness testified that a similar provision to those contained in Proposals 6 and 7 is currently in place in the Northeast order. The witness was of the opinion that defined time periods during which de-pooled milk cannot again become pooled causes handlers to behave differently by taking a longer term view of pooling. The witness explained that handlers in the Northeast order need to evaluate more than the current month's economic impacts of pooling or not pooling milk, along with possible future missed opportunities.

The Dean witness further contrasted the current "dairy farmer for other markets" provision effective in the Northeast to the standards proposed in Proposals 6 and 7. The witness testified that in the Northeast order, July is a month when de-pooled milk can return to the pool regardless of when the milk had been de-pooled during the previous year. Relying on market administrator data, the witness related that during the months of February through July 2004, large volumes of milk were de-pooled from the Northeast order. Because of the "dairy farmer for other markets" provision, the witness explained, milk that was de-pooled during the months of February through June could not return to the pool until July. During this period, noted the Dean witness, a large volume of milk usually pooled on the Northeast order was pooled on the Mideast order.

The Dean witness testified that Proposal 6 would require a handler that de-pooled milk in a month to remain off the pool for eleven additional months or ship 10 days milk production of a producer to a pool distributing plant in order for all milk of a producer to return to the pool, while Proposal 7 would provide the option to either return during designated months depending on the month in which milk was de-pooled, or ship 10 days milk production of a producer to a pool distributing plant in order for all milk of a producer to return to the pool.

A second Dean witness offered additional testimony in support of Proposal 6. The witness testified that Proposal 6 would exclude from the pool the milk of any dairy farmer not continuously pooled under a Federal milk order during the previous twelve months. The only exception to this exclusion would be a dairy farmer who temporarily lost Grade A status but was reinstated as a Grade A producer within 21 days, noted the additional Dean witness. The witness emphasized that the portion of Proposal 6 that would require delivery of 10 days milk production of a dairy farmer to a pool distributing plant in order for all milk of a producer to re-join the pool would discourage de-pooling. The 10 day delivery requirement would insure that participation in the pool was open to any dairy farmer for whom it was technically and economically feasible to supply milk for fluid use. According to the witness, Proposals 6 and 7 also would make more milk readily available to service the fluid needs of the market.

The additional Dean witness also stressed that adoption of Proposal 6 would not totally eliminate de-pooling but would make it more difficult to re-pool milk after it had been de-pooled. The Dean witness testified that producer milk continuously pooled on the Central, or any other Federal milk order, which shares in both the costs and benefits of pool participation on a continuous basis would not be affected by adoption of Proposal 6.

The second Dean witness added that adoption of Proposal 6 would increase returns to producers and provide for more orderly marketing conditions. The witness was of the opinion that adoption of Proposal 6 would cause Class II, III or IV milk to remain pooled during times when the blend price was lower than the respective class price. This would increase the PPD, by making it less negative, and raise the blend price received by all producers, the witness concluded. Adoption of Proposal 6 also would cause some Class III milk that is de-pooled to never return to the pool, the witness noted, since it would no longer be financially advantageous.

A Kansas dairy farmer testified in support of Proposal 6. The witness stated that de-pooling cost Kansas dairymen who supplied the needs of the fluid market $6.2 million between March 2004 and October 2004. The witness spoke in favor of any proposal that would require greater commitment to servicing the Class I needs of the Central marketing area.

A DFA member dairy farmer from Missouri testified that de-pooling hurts dairy farmers and was in favor of any proposal that would limit the ability for milk to return to the pool the immediate month after de-pooling. The witness stated that there should be a waiting period of at least 2 or 3 months to pool milk after the milk had been de-pooled or a limit on the milk volume that could return to the pool the month after de-pooling.

Land O' Lakes (LOL), initially a member of AMPI, et al., opposing adoption of Proposals 2, 6, 7 or 8, submitted a comment to the recommended decision in support of adoption of Proposal 2. LOL suggested, however, a 135 percent pooling limit for

the month of March to compensate for 28 days in the month of February and the increases in milk production typically seen during the spring months.

A witness appearing on behalf of Dean testified in opposition to Proposal 2. The witness was of the opinion that limiting pooling to 125 percent of receipts pooled during the previous month was too loose of a standard and urged the adoption of Proposal 6 or Proposal 8.

A witness appearing on behalf of AMPI, et al., testified in opposition to Proposals 2, 6, 7, and 8. The witness was of the opinion that de-pooling was an issue that was national in scope, and should be addressed in a national hearing. The witness testified that the voluntary option of pooling or not pooling milk delivered to a nonpool plant has been a mainstay of the Federal order system and should not be amended. The witness was of the opinion that Proposals 2, 6, 7, and 8 do not address the root cause of price inversions—advance Class I pricing—but rather only treats the symptom of the problem. Class I prices are announced by the USDA in advance, noted the witness, while milk prices for manufactured uses are announced after the month has passed. This can cause a lag between changes in the value of milk and changes in the advanced Class I price, added the witness, sometimes resulting in a Class III price that exceeds the uniform and Class I price, otherwise known as a price inversion. The witness added that it would be appropriate to reconsider whether advanced pricing remains sound regulatory policy.

The AMPI, et al., witness was also of the opinion that Federal order Class I price differentials are artificially high. Milk used to produce cheese, the witness noted, is priced entirely through the marketplace and receives benefit from the Federal order system only when the uniform price is higher than the Class III price. Adoption of Proposals 2, 6, 7 or 8, the witness noted, would penalize milk used in the production of cheese by limiting the amount of milk that could be pooled and was a radical change in Federal order pooling philosophy. The witness added that adoption of these proposals would require cheese manufacturers to estimate Federal order blend prices and PPDs in an effort to decide whether it was more profitable to de-pool, remain pooled or a combination of both.

The AMPI, et al., witness testified that the de-pooling of milk does not cause any reduction to the amount of milk available to serve the fluid market. The witness was of the opinion that when milk was de-pooled there was not a reduction in the amount of milk made available to service the fluid market since the de-pooled milk may rejoin the pool the next month. The AMPI, et al., witness added that the Federal order system should be sharing money derived from Class I handlers, not taking money from dairy farmers whose milk is used in the production of cheese simply to offset a low Class I price created by the timing of announcing Class prices.

The AMPI, et al., witness was also of the opinion that the Department should not consider Proposals 2, 6, 7 and 8 on an emergency basis. The witness testified that the proposed shift in regulatory policy as contained within these proposals should require the issuance of a recommended decision with opportunity for public comment.

A witness representing NAJ testified that the problems arising from de-pooling are a result of the timing of price announcements. The witness also stated that the de-pooling issue would best be addressed at a national hearing.

In a post hearing brief, DFA/PF reiterated the position that the pooling of milk in any month should not exceed 125 percent of the milk volume pooled in the previous month. The brief indicated that the pooling proposals (Proposals 6, 7, and 8) advanced by Dean are too restrictive for the current marketing conditions in the Central marketing area. According to the brief, Proposal 2 represents the least restrictive pooling proposal that could be supported by current marketing conditions while providing a reasonable deterrent to de-pooling.

A brief on behalf of AMPI, et al., reiterated the view that de-pooling and re-pooling should be addressed on a national basis and that pooling decisions should continue to be based on immediate market conditions. The brief expressed the view that the ability to de-pool continues to be unrelated to the willingness to serve the needs of the Class I market.

A brief by Select/Continental supported Proposal 6 as advanced by Dean. The brief noted that this "dairy farmer for other markets" proposal offered the most comprehensive means to eliminate the inequities of de-pooling while maintaining the strongest possible support for producers continuously and reliably serving the needs of the Class I market. The brief noted that Proposals 2 and 8, seeking to restrict the ability to pool to 125 percent and 115 percent of the previous month's volume respectively, was an improvement over current conditions but was not as robust as Proposal 6 which would require a 12-month pooling commitment by handlers. The brief found agreement with AMPI, et al., that de-pooling is an issue that should be addressed on a national basis.

The brief by Dean reiterated support for Proposals 6, 7 or 8, in order of preference, seeking to restrict the ability of handlers to de-pool and re-pool milk in the Central marketing area. The brief expressed the view that Class I handlers who are required to pool their milk receipts are at a constant financial disadvantage to those handlers who may opt to pool or not pool.

Dean, in comments to the Recommended Decision, supported adoption of Proposal 2, but was of the opinion that the adopted amendments may not go far enough in preventing de-pooling.

AMPI, along with First District Association (AMPI Group), took exception to the adoption of any proposals that would deter the practice of de-pooling. The AMPI Group reiterated their position that Proposals 2, 6, 7 and 8 do not address the root cause of price inversions—advance Class I pricing—but rather only treats the symptom of the problem.

Family Dairies, a dairy farmer cooperative that pools milk on the Central order, took exception to adopting any proposals that would deter the practice of de-pooling. The comment suggested that price inversions and negative PPDs should be the focus of any regulatory change.

All Federal milk marketing orders require the pooling of milk received at pool distributing plants—which is predominantly Class I milk—and all pooled producers and handlers on an order share in the additional revenue arising from higher valued Class I sales. Manufacturing handlers and cooperatives of Class II, III and IV uses of milk who meet the pooling and performance standards make all of their milk receipts eligible to be pooled and usually find it advantageous. Manufacturing handlers and cooperatives who supply a portion of their total milk receipts to Class I distributing plants receive the difference between their use-value of milk and the order's blend price. Federal milk orders, including the Central order, establish limits on the volume of milk eligible to be pooled that is not for fluid uses primarily through diversion limit standards. However, manufacturing handlers and cooperatives are not required, as are Class I handlers, to pool all their eligible milk receipts.

According to the record, manufacturing handlers and cooperatives have opted to not pool their milk receipts when the manufacturing class prices of milk are

higher than the order's blend price—commonly referred to as being "inverted." During such months, manufacturing handlers and cooperatives have elected to not pool all of their eligible milk receipts because doing so would require them to pay into the PSF of the order, the mechanism through which handler and producer prices are equalized. When prices are not inverted, handlers would pool all of their eligible receipts and receive a payment or draw from the PSF. In receiving a draw from the PSF, such handlers will have sufficient money to pay at least the order's blend price to their supplying dairy farmers.

When manufacturing handlers and cooperatives opt to not pool all of their eligible milk receipts in a month, they are essentially avoiding a payment to the PSF. This, in turn, enables them to avoid the marketwide sharing of the additional value of milk that accrues in the higher-valued uses of milk other than Class I. When the Class I price again becomes the highest valued use of milk, or when other class-price relationships become favorable, the record reveals that these same handlers opt to again pool their eligible milk receipts and draw money from the PSF. It is the ability of manufacturing handlers and cooperatives opting to not pool milk and thereby avoid the marketwide sharing of the revenue accruing from non-Class I milk sales that is viewed by proponents as giving rise to disorderly marketing conditions. According to proponents, producers and handlers who cannot escape being pooled and priced under the order are not assured of equitable prices.

The record reveals that since the implementation of Federal milk marketing order reform in January 2000, and especially in more recent years, large and rapid increases in manufactured product prices during certain months have provided the economic incentives for manufacturing handlers to opt not to pool eligible milk on the Central order. For example, during the three month period of February to April 2004, the Class III price increased over 65 percent from $11.89 per cwt to $19.66 per cwt. During the same time period, total producer milk pooled on the Central order decreased by nearly 50 percent from 1.16 billion pounds to 612 million pounds. When milk volumes of this magnitude are not pooled the impacts on producer blend prices are significant. Producers who incur the additional costs of consistently servicing the Class I needs of the market receive a lower return than would otherwise have been received if they did not continue to service the Class I market. Prices received by dairy farmers who supplied the other milk needs of the market are not known. However, it is reasonable to conclude that prices received by dairy farmers were not equitable or uniform.

The record reveals that "inverted" prices of milk are generally the result of the timing of Class price announcements. Despite changes made as part of Federal milk order reform to shorten the time period of setting and announcing Class I milk prices and basing the Class I price on the higher of the Class III or Class IV price to avoid price inversions, large month-to-month price increases in Class III and Class IV product prices sometimes trumped the intent of better assuring that the Class I price for the month would be the highest-valued use of milk. In all orders, the Class I price (and the Class II skim price) is announced prior to or in advance of the month for which it will apply. The Class I price is calculated by using the National Agricultural Statistics Service (NASS) surveyed cheese, butter, nonfat dry milk and dry whey prices for the two most current weeks prior to the 24th day of the preceding month and then adding a differential value to the higher of either the advanced Class III or Class IV price.

Historically, the advance pricing of Class I milk has been used in all Federal orders because Class I handlers cannot avoid regulation and are required to pool all of their Class I milk receipts, they should know their product costs in advance of notifying their customers of price. However, milk receipts for Class III and IV uses are not required to be pooled; thus, Class III and IV product prices (and the Class II butterfat value) are not announced in advance. These prices are announced on or before the 5th of the following month. Of importance here is that manufacturing plant operators and cooperatives have the benefit of knowing all the classified prices of milk before making a decision to pool or not pool eligible receipts.

The record reveals that the decision of manufacturing handlers or cooperatives to pool or not pool milk is made on a month-to-month basis and is generally independent of past pooling decisions. Manufacturing handlers and cooperatives that elected to not pool their milk receipts did so to avoid making payments to the PSF and they anticipated that all other manufacturing handlers and cooperatives would do the same. However, the record indicates that normally pooled manufacturing handlers and cooperatives met the pooling standards of the order to ensure that the Class I market was adequately supplied and that they established eligibility to pool their physical receipts, including diversions to nonpool plants. Opponents to proposals to deter de-pooling are of the view that meeting the pooling standards of the order and deciding how much milk to pool are unrelated events. Proponents took the view that participation in the marketwide pool should be based on a long-term commitment to supply the market because in the long-term it is the sales of higher priced Class I milk that adds additional revenue to the pool.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Class I, II and IV milk pooled. In essence, the PPD is the residual revenue remaining after all butterfat, protein and other solids values are paid to producers. If the pooled value of Class I, II and IV milk is greater than the Class III value, dairy farmers receive a positive PPD. While the PPD is usually positive, a negative PPD can occur when class prices rise rapidly during the six-week period between the time the Class I price is announced and the time the Class II butterfat and III and IV milk prices are announced. When manufacturing prices fall, this same lag in the announcement of class prices yields a positive PPD.

As revealed by the record, when manufacturing plants and cooperatives opted to not pool milk because of inverted price relationships, PPD's were much more negative. When this milk is not pooled, a larger percentage of the milk remaining pooled will be "lower" priced Class I milk. When manufacturing milk is not pooled, the weighted average value of milk decreases relative to the Class II, III or IV value making the PPD more negative. For example, record evidence demonstrated that in April 2004, a month when a sizeable volume of milk was not pooled, the PPD was a negative $3.97 per cwt. If all eligible milk had been pooled, the PPD would have been $.87 per cwt higher or a negative $3.10 per cwt. This $0.87 per cwt represents the additional burden borne by those producers who remained pooled.

The record reveals that when manufacturing handlers and cooperatives opt to not pool milk, unequal pay prices may result to similarly located dairy farmers. For example, Dean noted that when a cooperative delivers a high percentage of their milk receipts to a distributing plant, it lessens their ability to not pool milk, making them less competitive in a marketplace relative to other producers and handlers. Other evidence in the record supports conclusions identical to Dean that when a dairy

farmer or cooperative is able to receive increased returns from shipping milk to a manufacturing handler during times of price inversions, other dairy farmers or cooperatives who may have shipped more milk to a pool distributing plant are competitively disadvantaged.

The record of this proceeding reveals that the ability of manufacturing handlers and cooperatives to not pool all of their eligible milk receipts gives rise to disorderly marketing conditions and warrants the establishment of additional pooling standards to safeguard marketwide pooling. Current pooling provisions do not require or prohibit handlers and cooperatives from pooling all eligible milk receipts. However, the record reveals that when handlers and cooperatives opt to not pool milk inequities arise among producers and handlers that are contrary to the intent of the Federal milk marketing order program—maintaining orderly marketing conditions.

The record contains extensive testimony regarding the effects on the milk order program resulting from advance pricing and the priority the milk order program has placed on the Class I price being the highest valued use of milk. It remains true that the Class I use of milk is still the highest valued use of milk notwithstanding those occasional months when milk used in usually lower-valued classes may be higher. This has been demonstrated by an analysis of the effective Class I differential values—the difference in the Class I price at the base zone of Jackson County, Missouri, and the higher of the Class III or Class IV price—for the 65 month period of January 2000 through May 2005 performed by USDA.[2] These computations reveal that the effective monthly Class I differential averaged $1.97 per cwt. Accordingly, it can only be concluded that in the longer-term Class I sales continue to be the source of additional revenue accruing to the pool even when, in some months, the effective differential is negative.

Price inversions occur when the wholesale price for manufactured products rises rapidly indicating a tightening of milk supplies to produce those products. It is for this reason that the Department chose the higher of the Class III and Class IV prices as the mover of the Class I price. Distributing plants must have a price high enough to attract milk away from manufacturing uses to meet Class I demands. As revealed by the record, this method has not been sufficient to provide the appropriate price signals to assure an adequate supply of milk for the Class I market. Accordingly, additional measures are needed as a means of assuring that milk remains pooled and thus available to the Class I market. Adoption of Proposal 2 is a reasonable measure to meet the objectives of orderly marketing.

This decision does find that disorderly marketing conditions are present when producers do not receive uniform prices. Handlers and cooperatives opting to not pool milk do not account to the pool at the classified use-values of those milk receipts. They do not share in all the additional costs and burdens with those producers who are pooled and who are incurring the costs of servicing the Class I needs of the market. This is not a desired or reasonable outcome especially when the same handlers and cooperatives will again pool all of their eligible receipts when class-price relationships change in a subsequent month. These inequities borne by the market's producers are contrary to the intent of the Federal order program's reliance on marketwide pooling—ensuring that all producers supplying the market are paid uniform prices for their milk regardless of how the milk of any single producer is used.

Despite the exceptions submitted by AMPI Group and Family Dairies, it is reasonable that the order contain pooling provisions intended to deter the disorderly conditions that arise when de-pooling occurs. Such provisions maintain and enhance orderly marketing. Accordingly, this decision finds it reasonable to adopt provisions that limit the volume of milk a handler or cooperative may pool in a month to 125 percent of the total volume pooled by the handler or cooperative in the prior month. Adoption of this standard will not prevent manufacturing handlers or cooperatives from electing to not pool milk. However, it should serve to maintain and enhance orderly marketing by encouraging participation in the marketwide pooling of all classified uses of milk.

This decision does not adopt a 135 percent pooling limit for the month of March as suggested by LOL in their comments and exceptions to the recommended decision. A 135 percent standard applicable for the month of March was not considered and examined at the hearing.

Consideration was given on whether de-pooling should be considered at a national hearing with other, broader national issues of milk marketing. However each marketing area has unique marketing conditions and characteristics which have area-specific pooling provisions to address those specific conditions. Because of this, pooling issues are considered unique to each order. This decision finds that it would be unreasonable to address pooling issues, including de-pooling, on a national basis.

Some manufacturing handlers and cooperatives argued at the hearing, and noted in exceptions to the Recommended Decision, that their milk did perform in meeting the Class I needs during the month and this occurred before making their pooling decisions. They argue that the Class I market is therefore not harmed and that the intents and goals of the order program are satisfied. With respect to this proceeding and in response to these arguments, this decision finds that the practice of de-pooling undermines the intent of the Federal order program to assure producers uniform prices across all uses of milk normally associated with the market as a critical indicator of orderly marketing conditions. Similarly, handlers and cooperatives who de-pool purposely do so to gain a momentary financial benefit (by avoiding making payments to the PSF) which would otherwise be equitably shared among all market participants. While the order's performance standards tend to assure that distributing plants are adequately supplied with fresh, fluid milk, the goals of marketwide pooling are undermined by the practice of de-pooling. Producers and handlers who regularly and consistently bear the costs of serving the Class I needs of the market will not equitably share in the additional value arising momentarily from non-fluid uses of milk. These same producers and handlers will, in turn, be required to share the additional revenue arising from higher-valued Class I sales in a subsequent month when class-price relationships change.

The four proposals considered in this proceeding to deter the practice of de-pooling in the Central order have differences. They all seek to address market disorder arising from the practice of de-pooling. However, this decision does not find adoption of the two "dairy farmer for other markets" proposals—Proposals 6 and 7—reasonable because they would make it needlessly difficult for milk to be re-pooled and because their adoption may disrupt prevailing marketing channels or cause the inefficient movement of milk. Likewise, Proposal 8, to restrict pooling in a month to 115 percent of the prior month's volume pooled by the handler, is not adopted. Adoption of

[2] Official notice is taken of data and information published in Market Administrator Bulletins, as posted on individual Market Administrator Web sites.

this proposal would disrupt current marketing conditions beyond what the record justifies. Therefore, this decision adopts Proposal 2 to limit the pooling of milk in any month by a handler to 125 percent of the handler's pooled receipts in the prior month because it provides the most reasonable measure to deter the practice of de-pooling.

3. Transportation and Assembly Credits

A proposal, published in the hearing notice as Proposal 3 and modified at the hearing, seeking establishment of transportation and assembly credits in the Central Order is not adopted. The published proposal seeks to provide a credit for the shipment of milk from supply plants to distributing plants. The proposal was modified at the hearing to expand the transportation credit to include milk shipped directly from dairy farms to distributing plants. In addition, the modified proposal would provide an assembly credit for milk shipped directly from dairy farms to distributing plants.

The proposal would provide a credit for the shipment of milk from supply plants and dairy farms to distributing plants at a rate of $0.003 per cwt per mile, excluding the first 25 miles of shipment and all shipments farther than 500 miles. In addition, the proposal would provide for a credit of $0.10 per cwt for the assembly of milk from dairy farms to distributing plants. The Central order does not currently have transportation or assembly credit provisions.

As published in the hearing notice, Proposal 3 was advanced by AMPI, et al. The modification to Proposal 3, presented at the hearing to include transportation credits for shipments from dairy farms directly to distributing plants was advanced by DFA/PF.

On behalf of all proponents of Proposal 3, the Foremost, et al., witness requested that the proposal be modified to remove all references to "milk reload stations" as originally offered in the proposal. Accordingly, no additional references will be made concerning re-load stations in this decision.

A witness appearing on behalf of AMPI, et al., testified that transportation and assembly credits are needed in the Central marketing area to allow transporting handlers to recover costs of assembling and transporting milk to serve the Class I needs of the market.

The AMPI, et al., witness was of the opinion that the rates and distance limitations proposed for the transportation and assembly credits would compensate handlers for approximately 75 percent of the cost of moving milk from supply plants to distributing plants within the marketing area. The witness asserted that this was reasonable because it would keep transportation and assembly cost recovery at less than full cost. According to the witness, the proposed rates and distance limitations would tend to discourage inefficient movements of milk by handlers from seeking transportation and assembly credits.

The AMPI, et al., witness expressed the opinion that all producers receiving the benefits of marketwide pooling should contribute to the recovery of costs associated with moving milk within the marketing area to serve the Class I needs of the market. The witness provided examples of milk movements where supply plant handlers moving milk to distributing plants were unable to recover the full costs of assembling and transporting milk at Federal order minimum prices. The witness testified that because handlers transporting milk directly from dairy farms to distributing plants incur costs similar to the overhead costs incurred by handlers transporting milk from supply plants, the proponents seek an assembly credit for all milk that serves the Class I market. The AMPI, et al., witness testified that even though dairy farmers currently are charged for the cost of assembling their milk into loads and transporting the milk to distributing plants, the charges are insufficient to completely recoup the costs incurred by handlers.

A witness representing DFA/PF testified in support of Proposal 3 and modified the proposal to include the transportation and assembly credits for milk shipped directly from farms to distributing plants. The witness asserted that the costs of assembly and transportation of milk in the Central marketing area are not fully recouped in the market by handlers. The witness noted that the $0.003 per mile transportation credit rate would apply to milk shipped to a distributing plant.

The DFA/PF witness testified that additional compensation for the transportation and assembly of milk for fluid use is needed in particular areas of the Central marketing area because the order's blend price is insufficient to keep milk produced in the marketing area within the marketing area. The witness noted this was specifically apparent in the southeastern portion of the marketing area that borders portions of the Southeast and Appalachian orders. In addition, the witness testified that the location values of milk for markets within the Central marketing area, for example in St. Louis, Missouri, and areas of southern Illinois, are similarly insufficient to attract milk. According to the witness, this causes milk procurement problems for some distributing plants in this localized portion of the Central marketing area.

The DFA/PF witness testified that marketwide service payments are authorized in the legislation that provides for Federal milk orders. The witness explained that payments for services not elsewhere compensated can be taken from producer revenue to compensate providers of services that are of marketwide benefit. The witness asserted that transportation and assembly operations performed in the Central marketing area meet the general objectives of providing marketwide service for marketwide benefit. According to the witness, Proposal 3, as modified, describes a set of services that benefit the entire market. The witness was of the opinion that the marketwide services include: marketing of milk, farm pick-up of milk, off-load and re-load of milk, procurement of milk, selling milking equipment, disseminating information and prices to producers, milk testing, delivery to distributing plants, and other field services.

According to the DFA/PF witness, inclusion of milk shipped directly from dairy farms to distributing plants for transportation and assembly credits would be more representative of how the majority of milk is transported to distributing plants regulated by the order. The witness noted that in the Central marketing area distributing plants receive only about 4.5 percent of their milk from supply plants. The witness testified that the modification of Proposal 3 to include milk shipped from farms to distributing plants would more accurately represent the transportation compensation requirements needed to ensure delivery of milk for fluid use.

According to the DFA/PF witness, the inclusion of farm to distributing plant shipments would require the Market Administrator of the Central order to verify handler claims for receiving credits. The witness indicated that least-distance routes for delivery from each point of origin to the destination distributing plants would need to be determined. According to the witness, the additional cost that would be borne by the Market Administrator in administering transportation and assembly provisions would be negligible and should not require a higher administrative assessment. However, the witness acknowledged that proponents had not consulted the Market Administrator's office for an estimate of additional administrative costs that may be borne in operating a

transportation and assembly credit provision.

The DFA/PF witness testified that the St. Louis area market is unable to consistently and successfully attract milk from the Central order's milkshed because the order's Class I price and the blend price are lower than those in the nearby Appalachian and Southeast marketing areas. According to the witness, marketwide service payments for transportation and assembly of milk to serve markets such as St. Louis would provide sufficient financial incentive to offset the higher blend prices of these bordering Federal milk marketing areas. Additionally, it would ensure a consistent and reliable supply of milk to meet the needs of that portion of the Central marketing area's Class I market, the witness said.

A witness for Prairie Farms (PF) testified in support of the adoption of Proposal 3 as modified at the hearing. The witness was of the opinion that without expansion of transportation and assembly credits that included direct shipped milk, the ability to serve the Class I needs of all locations in the Central marketing area would not be achieved because milk would seek the higher blend prices available in the nearby markets of the Appalachian and Southeast orders. The witness from Prairie Farms provided example scenarios of actual and hypothetical net returns possible for handlers shipping milk to distributing plants in the Central, Appalachian, and Southeast marketing areas. The witness compared these returns to net returns available from shipping to distributing plants in Illinois and St. Louis within the Central marketing area. According to the witness, these example scenarios reinforced the assertion that milk is attracted by higher Class I prices in localized areas of the Appalachian and Southeast marketing areas.

The PF witness was of the opinion that inappropriate Class I differential levels, as in the St Louis area example, were the root cause of the market's inability to attract sufficient fluid milk; however, modifications to the Class I price surface are not currently feasible. In light of this, the witness stated that obtaining the needed financial incentives to ensure delivery of milk to this deficit portion of the marketing area by the use of transportation and assembly credits is a reasonable alternative to changing the Class I differentials.

The DFA/PF witness estimated that providing credits for milk transported from farms to distributing plants would reduce the Central order's blend price to dairy farmers by $0.045 per cwt per month. The Foremost, et al., witness testified that the impact of providing credits for assembly would reduce the Central order's blend price by $0.036–$0.040 per cwt per month. The DFA/PF witness testified that the combined impact of transportation credits for the supply plant to distributing plant movements, direct delivery from farms to distributing plants, and assembly credits would reduce the Central marketing area's blend price by a total of $0.081–$0.085 per cwt per month.

DFA/PF took exception to the Recommended Decision and reiterated their support for the adoption of transportation and assembly credits. DFA/PF again noted that transportation and assembly credits, as proposed, were designed to reward those who supply the fluid milk needs of the entire market and are necessary to facilitate the orderly movement of milk.

A witness for Dean testified in support of Proposal 3 as modified by DFA/PF. The Dean witness expressed a preference for the DFA/PF modification to include direct farm milk shipments to distributing plants but did not support adoption of assembly credits. The witness noted that Dean would consider the entire Proposal 3, including the DFA/PF modification, if the assembly credit feature were retained. The witness was of the opinion that adopting the proposal would increase equity among handlers and producers who supply the Class I market. However, the witness was unable to identify distributing plants in the St. Louis and southern Illinois portions of the marketing area that did not or could not receive sufficient milk supplies. In addition, the witness was unable to recall if handlers had asked or relied on the Central marketing area's Market Administrator to increase the Central order's performance standards to bring forth milk to meet the market's Class I needs.

Dean reiterated support for adoption of transportation and assembly credits in exceptions to the Recommended Decision. Dean noted that handlers face higher costs in procuring milk supplies in the St. Louis area, and that adoption of transportation and assembly credits would help reduce those costs.

In a post hearing brief, Select/Continental indicated general opposition to adopting transportation and assembly credits for milk movements from supply plants to distributing plants. The brief expressed support for a transportation and assembly credit provision that would be limited to milk shipped directly from dairy farms to distributing plants. According to the brief, milk should be attracted to markets for specific use through classified pricing. Fluid milk, according to the brief, should be attracted to distributing plants by appropriate location values. According to the brief, implementing transportation and assembly credits in the Central marketing area would be an admission that the Class I price surface was no longer successful in meeting the Class I needs of the marketing area.

In a post hearing brief, DFA/PF reiterated their support for transportation and assembly credits as modified. The brief reiterated support and reinforcement of the testimony offered to expand the scope for transportation and assembly credits to include direct farm-to-plant milk movements. Likewise, Dean Foods reiterated its support in a post-hearing brief for expanding transportation and assembly credits to include direct farm-to-plant milk movements as a means to improve the available milk supply for its distributing plant operations in the southeastern portion of the Central order.

Geographically, the Central marketing area is the largest Federal milk marketing area, spanning the distance from eastern Illinois to western Colorado. It is bordered by the Upper Midwest, Mideast, Appalachian, Southeast, and Southwest marketing areas. The marketing area also is bordered by unregulated areas on the west including Utah, portions of western South Dakota, western portions of Nebraska, and all of Wyoming. In addition the Central marketing area completely surrounds a large unregulated area in central Missouri.

Proposal 3 as advanced by AMPI, et al., seeks to establish a marketwide service payment in the form of a transportation credit for the movement of milk from supply plants to distributing plants at a rate of $0.003 per cwt per mile. The proposal provides for a distance limit for receipt of the credit for milk movements between 25 to 500 miles from the supply plants to distributing plants. The proposal also seeks the establishment of an assembly credit feature for which handlers would collect $0.10 per cwt for the assembly of loads of milk within the marketing area.

The modification to Proposal 3, advanced by DFA/PF, seeks expansion of the transportation credit to include milk shipped directly from dairy farms to distributing plants. The modification would establish a transportation credit rate of $0.003 per cwt per mile for milk shipped directly from dairy farms to distributing plants. The combination of the two proposals effectively seeks transportation and assembly credits for

all Class I milk pooled on the Central order. The rationale for the modification to Proposal 3 is that milk shipped directly from farms to distributing plants represents more than 95 percent of all milk shipped to distributing plants. Milk shipped from supply plants represents about 5 percent of all milk shipped to distributing plants.

Proponents estimate that the Central order blend price would be lowered in the range of $0.036–$0.040 per cwt per month by the assembly credit feature for all Class I milk, if adopted. The proponents estimate that the impact of the transportation credit for all Class I milk pooled on the Central order would be a blend price reduction of approximately $0.045 per cwt, if adopted. The combined reduction to the Central order blend price per month would be $0.081–$0.085 per cwt.

The transportation and assembly credits advanced by the proponents are similar to the transportation and assembly credits implemented in the Chicago Regional order, a predecessor order of the current Upper Midwest order. The transportation and assembly credit provisions of the Chicago Regional order were carried forward into the provisions of the current Upper Midwest order as a part of Federal milk order reform. These provisions were first implemented in 1987 to ensure that the costs of serving the Class I market of the Chicago Regional marketing area were shared by all market participants that benefited from the revenue generated from Class I sales. The impact on producer revenue was expected to be minimal according to the Final Decision published October 15, 1987, (7 CFR 10130).

The transportation credit provisions of the Upper Midwest order provide a credit of $0.028 cents per mile for bulk milk delivered from pool plants to distributing plants. The assembly credit provisions of the Upper Midwest order provide a credit of $0.08 cents per cwt to the operator of a distributing plant for milk received from dairy farms and pool plants. The credits are computed by the Market Administrator and are deducted from the marketwide value of milk before calculation of the order's blend price. The impact of these credits on the Upper Midwest blend price ($0.02–$0.03 per cwt) are one fourth to one third the magnitude of impact that proponents expect the proposed transportation and assembly credits would have on the Central order blend price, if adopted.

The transportation and assembly credit features of the current Upper Midwest order and the pre-reform Chicago Regional order are similar in the magnitudes of their costs per mile and per hundredweight of milk handled. The transportation and assembly credit provisions of the Chicago Regional order applied to a geographically compact milkshed with the emphasis on encouraging milk movements to the single urban market of Chicago. The Chicago Regional marketing area (and the Chicago metropolitan area of the current Upper Midwest marketing area) was supplied with milk primarily from southern and central Wisconsin. The transportation and assembly credit feature of the current Upper Midwest marketing order provides pool plants that serve the Class I market with some recovery of assembly and transportation costs incurred in transferring milk to distributing plants.

In contrast, the Central marketing area is geographically much larger and handlers with Class I route disposition serve multiple urban centers in a variety of States located from Illinois to Colorado. Despite exceptions to the Recommended Decision from DFA, the record reveals that the area of concern to the proponents is a relatively limited area of St. Louis and portions of southern Illinois. The record does not reveal that there are other portions of the marketing area where problems have been identified in procuring milk supplies for Class I use. Accordingly, it is reasonable to conclude that marketwide service payments in the form of transportation and assembly credits on all Class I milk may only solve a localized problem while all dairy farmers would receive a lower blend price for their milk.

The impact of transportation and assembly credits on dairy farmer income is far lower in the Upper Midwest marketing area than that proposed for the Central order. For example, according to Market Administrator data, the reduction to the Upper Midwest blend price in October 2004 was $ 0.015 per cwt and $0.0125 per cwt for the assembly and transportation credits, respectively. This represents an overall reduction of $0.0275 per cwt to the Upper Midwest blend price in that month. Market Administrator data shows that during May 2005 the reduction to the Upper Midwest blend price attributable to the combined impact of the transportation and assembly credit features was $0.020 per cwt.

The record reveals that the impact anticipated by proponents of transportation and assembly credits on the Central order blend price would be a reduction of as much as $0.081–$0.085 per cwt. The reduction in blend prices and dairy farmer income that would result from the adoption of a transportation and assembly credit of this magnitude would be 3–4 times the magnitude of the blend price reduction that dairy farmers experience in the Upper Midwest. According to Market Administrator information, the average sized producer in the Central marketing area produces and markets about 200,000 pounds of milk per month. The average reduction in income for such an average producer per month would be $160–$170 per month, or about $2000 per year. A similar sized producer in the Upper Midwest marketing area would experience a reduction in income of $40–$57 per month or about $500–$680 per year. The differences in magnitudes are interesting but germane only to the extent that transportation and assembly credits are justified.

The proposed transportation and assembly credits are justified by proponents on the basis that the movement of milk to serve the Class I market is a marketwide service of marketwide benefit and credits for providing marketwide services are authorized in the Agricultural Marketing Agreement Act of 1937, (AMAA) as amended. However, the focus of the record evidence is on the marketing conditions in the southern Illinois and St. Louis regions of the Central marketing area. However, the record does not indicate that price differences as noted in proponent testimony concerning the eastern portion of the marketing area occur elsewhere in the Central marketing area. The record does not support concluding that handlers serving major urban areas in other regions of the marketing area (such as, Denver, Oklahoma City, or Tulsa) experience difficulty in attracting milk supplies. This supports concluding that the issues raised by the proponents are at best localized in nature rather than marketwide.

In addition, the record reveals in the testimony of the AMPI, et al., witness that some transportation and assembly costs incurred by handlers for milk delivered to distributing plants are recovered by the marketplace. While proponents have asserted that the recovery of costs for assembly by handlers is incomplete, the record contains insufficient information upon which to judge if lowering producer blend prices by as much as $.08 per cwt is reasonable. The size of the likely blend price reduction is important but not the critical factor in determining whether transportation and assembly credits are reasonable for the Central marketing area. The most important factor in that regard is whether the

marketwide costs would provide marketwide rather than local benefits.

Contrary to exceptions to the Recommended Decision from Dean, record evidence supplied by a Class I handler located in St. Louis indicates that the firm is able to continue receiving, bottling, and selling milk in the St. Louis area. This evidence suggests that milk movements to handlers in the St. Louis area are occurring and meet the order's Class I needs. This evidence provides a basis to conclude that the order provisions attract sufficient milk for fluid use. In this regard, the need for additional government intervention beyond what the order currently provides in meeting the market's fluid demands is not warranted.

The record evidence concerning challenges faced by handlers in moving milk within the Central marketing area to distributing plants in St. Louis and Illinois indicates that there may be, at best, localized issues in supplying the Class I needs of these plants. The proponents for transportation and assembly credits attribute these difficulties to the higher location values and blend prices of nearby or bordering portions of the Southeast and Appalachian orders. However, the record reveals that handlers have not sought alternative actions to bring forth additional milk supplies to meet Class I demands. For example, there is no record evidence illustrating that the Market Administrator has been called upon to change performance standards or diversion limits which would better ensure that the Class I needs of any of the Central marketing area's distributing plants would be met.

This decision finds that adoption of the proposed transportation and assembly credit provision is not supported by record evidence. Accordingly, this decision does not find agreement with the rationale advanced by proponents that marketwide service payments in the form of transportation and assembly credits for milk are needed to overcome deficiencies of the Central order. At best, record evidence demonstrates that if there are difficulties in procuring milk for Class I use, they are isolated to a fraction of the marketing area. Adopting transportation and assembly credits would unreasonably lower the returns to all dairy farmers pooled on the order to address a localized issue.

Withdrawn Proposal

A proposal published as Proposal 14, seeking to require payments from the producer settlement fund to be made no later than the next business day after the due date for payments into the producer settlement fund, was advanced by the Market Administrator. The proposal was withdrawn and was not considered in this decision.

Rulings on Proposed Findings and Conclusions

Briefs, 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 Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

(a) The tentative marketing agreement and the order, 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 area, and the minimum prices specified in the tentative marketing agreement and the order, 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 agreement and the order, 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, the marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Central marketing area, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

March 2006 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Recommended Decision published in the **Federal Register** on February 22, 2006 (71 FR 9015), regulating the handling of milk in the Central marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Dated: September 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Central Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the Recommended Decision issued by the Administrator, Agricultural Marketing Service, on February 15, 2006, and published in the **Federal Register** on February 22, 2006 (71 FR 9015), are adopted and shall be the terms and provisions of this order. The revised order follows.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

2. Section 1032.7 is amended by revising paragraph (c) introductory text and paragraph (h)(7) to read as follows:

§ 1032.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 25 percent during the months of August through February and 20 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

* * * * *

(h) * * *

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a plant must be requested in advance and in writing by the handler and must be approved by the market administrator. Such nonpool status shall be effective on the first day of the month following approval of the request by the market administrator and thereafter for the longer of twelve (12) consecutive months or until notification of the desire to requalify as a pool plant, in writing, is received by the market administrator. Requalification will require deliveries to a pool distributing plant(s) as provided for in § 1032.7(c). For requalification, handlers may not use milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c) for the first month.

3. Section 1032.13 is amended by revising paragraph (d)(1), redesignating paragraphs (d)(2) through (6) as paragraphs (d)(4) through (8), adding new paragraphs (d)(2) and (d)(3), revising redesignated paragraph (d)(4), and adding a new paragraph (f), to read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's milk production is caused by the handler to be physically received at a pool plant in each of the months of January and February, and August through November;

(3) The equivalent of at least one day's milk production is caused by the handler to be physically received at a pool plant in each of the months of March through July and December if the requirement of paragraph (d)(2) of this section (§ 1032.13) in each of the prior months of August through November and January through February are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November or January through February;

(4) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 75 percent during the months of August through February, and not more than 80 percent during the months of March through July, provided that not less than 25 percent of such receipts in the months of August through February and 20 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a), (b) or (i);

* * * * *

(f) The quantity of milk reported by a handler pursuant to either § 1032.30(a)(1) or § 032.30(c)(1) for the current month may not exceed 125 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk received at pool plants in excess of the 125 percent limit, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information the provisions of paragraph (d)(5) of this provision shall apply. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 125 percent limitation;

(2) Producer milk qualified pursuant to § ____.13 of any other Federal Order in the previous month shall not be included in the computation of the 125 percent limitation; provided that the producers comprising the milk supply have been continuously pooled on any Federal Order for the entirety of the most recent three consecutive months.

(3) The market administrator may waive the 125 percent limitation:

(i) For a new handler on the order, subject to the provisions of paragraph (f)(3) of this section, or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Marketing Agreement Regulating the Handling of Milk in the Central Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1032.1 to 1032.86 all inclusive, of the order regulating the handling of milk in the Central marketing area (7 CFR Part 1032 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of January 2005, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, the contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 06–7498 Filed 9–6–06; 8:45 am]

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1033

Milk in the Mideast Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–166–A72; DA–05–01–B]

Milk in the Mideast Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; final decision.

SUMMARY: This document is the final decision proposing to adopt amendments to the Mideast order intended to deter the de-pooling of milk. This final decision is subject to producer approval by referendum.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This final decision adopts amendments that: (1) Establish a limit on the volume of milk a handler may pool during the months of April through February to 115 percent of the volume of milk pooled in the prior month; and (2) Establish a limit on the volume of milk a handler may pool during the month of March to 120 percent of the volume of milk pooled in the prior month. The proposed amended order is subject to producer approval by referendum.

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. The 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, as amended (7 U.S.C. 601–674), 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 Secretary 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 Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department'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 manufacturer 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.

During March 2005, the month during which the hearing occurred, there were 9,767 dairy producers pooled on and 36 handlers regulated by the Mideast order. Approximately 9,212 producers, or 94.3 percent, were considered small businesses based on the above criteria. Of the 36 handlers regulated by the Mideast during March 2005, 26 handlers, or 72.2 percent, were considered small businesses.

The adopted amendments regarding the pooling standards serve to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with and consistently serve the fluid needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and, by doing so, to determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk.

Criteria for pooling are established without regard to the size of any dairy industry organization or entity. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This action 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 approved 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.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 2005; published February 17, 2005 (70 FR 8043).

Amended Notice of Hearing: Issued March 1, 2005; published March 3, 2005 (70 FR 10337).

Tentative Partial Decision: Issued July 21, 2005; published July 27, 2005 (70 FR 43335).

Interim Final Rule: Issued September 20, 2005; published September 26, 2005 (70 FR 56111).

Final Partial Decision: Issued January 17, 2006; published January 23, 2006 (71 FR 3435).

Recommended Decision: Issued February 15, 2006; published February 22, 2006 (71 FR 9033).

Final Partial Rule: Issued April 17, 2006; published April 20, 2006 (71 FR 20335).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Mideast marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held at Wooster, Ohio, on March 7–10, 2005, pursuant to a notice of hearing issued February 14, 2005, published February 17, 2005, (70 FR 8043) and an amended notice of hearing issued March 1, 2005, and published March 3, 2005 (70 FR 10337).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on February 15, 2006, issued a Recommended Decision containing notice of the opportunity to file written exception thereto.

The material issues, findings, conclusions and ruling of the Recommended Decision, are hereby approved, adopted and are set forth herein. The material issues on the record of hearing relate to:

1. Pooling standards
A. Establish pooling limits
B. Producer definition
2. Transportation Credits

Findings and Conclusions

This final decision specifically addresses proposals published in the hearing notice as Proposals 4, 5, 6, 7, and 8 which seek to establish a limit on the volume of milk that can be pooled on the order; Proposal 9 which seeks to establish transportations credits; and features of Proposal 3 intended to clarify the *Producer* definition by providing a definition of "temporary loss of Grade A approval." Proposals which sought to change the performance standards of the order, Proposals 1 and 2, were addressed in a tentative partial decision published on July 27, 2005 (70 FR 43335). The portion of Proposal 3 that sought to amend the number of days a producer needs to deliver milk to a distributing plant before the milk of the producer is eligible for diversion was abandoned by the proponents at the hearing. No further reference to that portion of Proposal 3 will be made.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

A. Establishing pooling limits

Preliminary Statement. Federal milk marketing orders rely on the tools of classified pricing and marketwide pooling to assure an adequate supply of milk for fluid (Class I) use and to provide for the equitable sharing of the revenues arising from the classified pricing of milk. Classified pricing assigns a value to milk according to how the milk is used. Regulated handlers who buy milk from dairy farmers are charged class prices according to how they use the farmer's milk. Dairy farmers are then paid a weighted average or "blend" price. The blend price that dairy farmers are paid for their milk is derived through the marketwide pooling of all class uses of milk in a marketing area. Thus each producer receives an equal share of each use class of milk and is indifferent as to the actual class for which the milk was used. The Class I price is usually the highest class price for milk. Historically, the Class I use of milk provides the additional revenue to a marketing area's total classified use value of milk.

The series of class prices that are applicable for any given month are not announced simultaneously. The Class I price and the Class II skim milk price are announced prior to the beginning of the month for which they will be effective. Class prices for milk in all other uses are not determined until on or before the 5th day of the following month. The Class I price is determined by adding a differential value to the higher of either an advanced Class III or Class IV value. These values are calculated based on formulas using the National Agricultural Statistics Service (NASS) survey prices of cheese, butter, and nonfat dried milk powder for the first two weeks of the prior month. For example, the Class I price for August is announced in late July and is based on the higher of the Class III or IV value computed using NASS commodity price surveys for the first two weeks of July.

The Class III and IV prices for the month are determined and announced after the end of the month based on the NASS survey prices for the selected dairy commodities during the month. For example, the Class III and IV prices for August are based on NASS survey commodity prices during August. A large increase in the NASS survey price for the selected dairy commodities from one month to the next can result in the Class III or IV price exceeding the Class I price. This occurrence is commonly referred to by the dairy industry as a "class price inversion." A producer price inversion generally refers to when the Class III or IV price exceeds the average classified use value, or blend price, of milk for the month. Price inversions have occurred with increasing frequency in Federal milk orders since the current pricing plan was implemented on January 1, 2000, despite efforts made during Federal Order Reform to reduce such occurrences. Price inversions can create an incentive for dairy farmers and manufacturing handlers who voluntarily participate in the marketwide pooling of milk to elect not to pool their milk on the order. Class I handlers do not have this option; their participation in the marketwide pool is mandatory.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Classes. In essence, the PPD is the dairy farmer's share of the additional/reduced revenues associated with the Class I, II, and IV milk pooled in the market. If the weighted average price of Class I, II, and IV milk in the pool is greater than the Class III price, then dairy farmers receive a positive PPD. However, a negative PPD can occur if the value of the Class III milk in the pool exceeds the value of the remaining classes of milk in the pool. This can occur as a result of the price inversions discussed above.

The Mideast Federal order operates a marketwide pool. The Order contains pooling provisions which specify criteria that, if met, allow dairy farmers to share in the benefits that arise from classified pricing through pooling. The equalization of all class prices among handlers regulated by an order is accomplished through a mechanism known as the producer settlement fund (PSF). Typically, Class I handlers pay the difference between the blend price and their use-value of milk into the PSF. Manufacturing handlers typically receive a draw from the PSF, usually the difference between the Class II, III or IV price and the blend price. In this way, all handlers pay the class value for milk and all dairy farmer suppliers receive at least the order's blend price.

When manufacturing class prices of milk are high enough to result in a use-value of milk for a handler that is higher than the blend price, handlers of manufacturing milk may choose to not pool their milk receipts. Opting to not pool their milk receipts allows these handlers to avoid the obligation of paying into the PSF. The choice by a manufacturing handler to not pool their milk receipts is commonly referred to in the dairy industry as "de-pooling." When the blend price rises above the manufacturing class use-values of milk these same handlers again opt to pool

their milk receipts. This is often referred to as "re-pooling." The ability of manufacturing handlers to de-pool and re-pool manufacturing milk is viewed by some market participants as being inequitable to both producers and handlers.

The "De-Pooling" Proposals. Proponents are in agreement that milk marketing orders should contain provisions that will tend to limit the practice of de-pooling. Five proposals intending to limit the de-pooling of milk were considered in this proceeding. The proposals offered different degrees of deterrence against de-pooling by establishing limits on the amount of milk that can be re-pooled. The proponents of these five proposals are generally of the opinion that de-pooling erodes equity among producers and handlers, undermines the orderly marketing of milk and is detrimental to the Federal order system.

Two different approaches on how to best limit de-pooling are represented by these five proposals. The first approach, published in the hearing notice as Proposals 6 and 7, addresses de-pooling by limiting the volume of milk a handler can pool in a month to a specified percentage of what the handler pooled in the prior month. The second approach, published in the hearing notice as Proposals 4, 5 and 8, addresses de-pooling by establishing what is commonly referred to as a "dairy farmer for other markets" provision. These proposals would require milk of a producer that was de-pooled to not be able to be re-pooled by that producer for a defined time period. All proponents agreed that none of the proposals would completely eliminate de-pooling but would likely deter the practice.

Of the five proposals received that would limit de-pooling, this final decision adopts Proposal 7, as modified in post-hearing briefs, offered by Dairy Farmers of America and Michigan Milk Producers Association (DFA/MMPA). DFA/MMPA are Capper-Volstead cooperatives who pool milk on the Mideast market. Specifically, adoption of Proposal 7 will limit the volume of milk a handler can pool during the months of April through February to no more than 115 percent of the volume of milk pooled in the prior month, and limit the volume of milk a handler can pool in the month of March to 120 percent of the volume of milk pooled in the month prior. Milk diverted to nonpool plants in excess of these limits will not be pooled. Milk shipped to pool distributing plants and allocated to Class I in excess of the volume allocated to Class I in the prior month will not be subject to the 115 or 120 percent limitation. Milk pooled on another Federal order during the previous 3 consecutive months would not be subject to the 115 or 120 percent limitation. The 115 or 120 percent limitation may be waived at the discretion of the Market Administrator for a new handler on the order or for an existing handler whose milk supply changes due to unusual circumstances.

As published in the hearing notice, Proposal 6, offered by Ohio Dairy Producers (ODP) and Ohio Farmers Union (OFU), was virtually identical to Proposal 7. ODP is an organization of independent Ohio dairy farmers and agriculture businesses that work to increase the productivity and profitability of dairy farmers. OFU is an organization whose members include dairy farmers pooled on the Mideast order. Proposal 6 would limit the volume of milk a handler could pool in a month to 115 percent of the volume of milk pooled in the prior month. The proposal does not contain a separate pooling standard for the month of March. Milk shipped to pool distributing plants, or milk pooled on another Federal order during the preceding 6 months, would not be subject to the 115 percent standard. The proposal would grant authority to the Market Administrator to increase or decrease the 115 percent standard.

As published in the hearing notice, Proposals 4, 5 and 8 address de-pooling by establishing defined time periods during which de-pooled milk could not be pooled. Proposal 4, also offered by ODP and OFU, would require an annual pooling commitment by a handler to the market. The proposal specified that if the milk of a producer was not pooled during a month, or any of the preceding 11 months, the equivalent of at least 10 day's milk production of the dairy farmer would need to be delivered to a pool distributing plant during the month in order for all the milk of the dairy farmer for that month to be pooled. Proposal 4 is not adopted.

Proposal 5, offered by Continental Dairy Products (Continental), would limit the ability to pool the milk of a producer if such milk had not been pooled during the previous 12 months. Continental is a Capper-Volstead cooperative whose members milk is pooled on the Mideast order. Proposal 5 is not adopted.

Proposal 8, offered by Dean Foods Company (Dean), would not permit re-pooling for a 2 to 7 month period for milk that had been de-pooled. Dean is a handler that distributes fluid milk products within the Mideast marketing area. Under Proposal 8, if a producer's milk were de-pooled in any of the months of February through June, or during any of the preceding 3 months, or during any of the preceding months of July through January, the equivalent of at least 10 day's milk production would need to be physically received at a pool distributing plant in the order to pool all of the dairy farmer's production for the month. Additionally, if the milk of a dairy farmer is de-pooled in any of the months of July through January, or in a preceding month, at least 10 day's milk production of the dairy farmer would need to be delivered to a pool distributing plant to have all the milk of the dairy farmer pooled for the month. Proposal 8 is not adopted.

While Proposals 4, 5 or 8 are not adopted, to the extent that these proposals offered alternative methods to deter the practice of de-pooling, adoption of Proposals 6 and 7 essentially accomplishes this objective.

The proponents of Proposals 4, 5, 6, 7 and 8 are all of the opinion that current inadequate pooling standards enable manufacturing handlers to de-pool milk and immediately re-pool milk the following month and are in need of revision. According to the proponents, the Mideast blend price is lowered when large volumes of higher-valued milk used for manufacturing is de-pooled as well as when the large volumes of de-pooled milk returns to the pool. Furthermore, the witnesses argued that de-pooling handlers do not have to account to the Mideast pool at classified prices and therefore face different costs than their similarly situated pooling competitors. While all proponents insisted that the pooling standards of the order need to be amended to ensure producer and handler equity, their opinions differed only on how to best meet this end.

The current *Producer milk* provision of the Mideast order considers the milk of a dairy farmer to be producer milk when it has been received at a pool plant of the order. A producer must deliver 2 day's milk production to a pool plant during each of the months of August through November so that all the milk of a producer will be eligible to be pooled throughout the year. Once the standard has been met, the milk of a producer is eligible to be diverted to nonpool plants and continue to be priced under the terms of the order. A pool plant cannot divert more than 50 percent of its total producer milk receipts to nonpool plants during each of the months of August through February and 60 percent during each of the months of March through July. Milk that is subject to inclusion in another marketwide equalization program operated by another government entity

is not considered producer milk. The order currently does not limit a handler's ability to re-pool manufacturing uses of milk.

A witness appearing on behalf of Continental testified in support of Proposal 5. The witness was of the opinion that pooling provisions should limit a handler's ability to de-pool their milk receipts at will and with little consequence. The witness testified that Proposal 5 would prohibit a handler from pooling the milk of a producer that had been de-pooled during the previous 11 months. The witness characterized Proposal 5 as an adequate deterrent to handlers de-pooling large volumes of milk for short term financial gain. The witness added that adoption of Proposal 5 would provide adequate safeguards for new producers on the order or producers who may temporarily lose Grade A status to pool their milk without penalty.

A post-hearing brief submitted on behalf of Continental reiterated their support for the adoption of Proposal 5. The brief stressed that de-pooling leads to the inequitable sharing of revenues amongst producers and therefore should be dealt with in the most stringent manner. Continental argued that adoption of any proposal that would allow handlers to continue to de-pool any percentage of their milk receipts supports the concept that de-pooling is an acceptable practice. Continental vigorously opposed any level of de-pooling and insisted that adoption of Proposal 5 was the only appropriate proposal to re-establish equity in the marketplace.

A witness appearing on behalf of ODP testified in support of Proposals 4 and 6. According to the witness, over 1.3 billion pounds of milk was de-pooled during April and May 2004 reducing the value of the marketwide pool by $21.3 million. The ODP witness insisted that pooling standards should ensure that producer milk which regularly supplies the needs of the fluid market does not receive a lower blend price when manufacturing handlers opt to not pool their milk receipts. The witness noted that Federal order hearings have been held in the Central and Upper Midwest markets to address de-pooling. The witness stressed that if the ability of manufacturing handlers to not pool their milk receipts is eliminated in the Central and Upper Midwest markets, it may add to the volume of de-pooled milk in the Mideast market. The witness was of the opinion that adoption of either Proposal 4 or Proposal 6 would best solve the inequities created from de-pooling.

A witness appearing on behalf of Dean testified in support of Proposal 4. The witness asserted that the intent of the Federal order system is to ensure a sufficient supply of milk for fluid use and provide for uniform payments to producers who stand ready, willing, and able to serve the fluid market regardless of how the milk of any individual is utilized. The Dean witness testified that provisions allowing manufacturing handlers the option to participate or not participate in the pool causes inequities between handlers.

The Dean witness was of the opinion that de-pooling causes inequities between handlers and undermines the order's ability to provide for a stable milk supply to meet Class I demand. The inequity, the witness said, is that all handlers do not have the same ability to pool and de-pool; fluid handlers are required to pool their milk receipts while manufacturing handlers have the option of pooling their milk receipts. The witness was of the opinion that this difference in pooling options creates cost inequities between handlers since a fluid handler must always account to the pool at classified use values while manufacturing handlers may not.

The Dean witness also explained how de-pooling leads to inequities between producers. The witness used a hypothetical example of two cooperatives—Cooperative A that delivers 50 percent of its milk receipts to distributing plants and Cooperative B who delivers 30 percent of its milk receipts to distributing plants. Cooperative A, the witness said, is always at a disadvantage when a price inversion occurs because they can only de-pool 50 percent of their milk receipts because the milk delivered to distributing plants must be pooled. However, the witness said, Cooperative B can de-pool 70 percent of their milk receipts because only 30 percent is delivered to distributing plants. Therefore, the witness concluded, Cooperative B is able to pay a higher price to its dairy farmer suppliers since it is able to de-pool an additional 20 percent of its total milk receipts that Cooperative A cannot.

The Dean witness stressed that hearings have been held in other Federal orders to consider proposals seeking to deter de-pooling and urged the Department to adopt provisions to prevent milk from opportunistically pooling on the Mideast order. In the opinion of the Dean witness, Proposal 4 is the most appropriate solution to deter the de-pooling of milk because it creates large and long-term consequences to handlers who opt to de-pool. The Dean witness believed that should the Department determine that Proposal 4 is not appropriate, Proposal 8 would be the best alternative.

A post-hearing brief submitted on behalf of Dean reiterated support for the adoption of Proposal 4 with a modification. Dean proposed granting the Market Administrator the ability to waive a producer's de-pooled status if the producer was de-pooled after informing its pooling handler that it intended to deliver its milk to another handler. The brief stressed that the intention of Proposal 4 is not to prevent a producer from being pooled because of circumstances out of their control and believed their modification would remedy this potential situation. Dean's brief reiterated that de-pooling results in inequities between both handlers and producers. The brief noted that a provision similar to Proposal 4 is in place in the Northeast order and asserted that it has been very effective in limiting de-pooling.

Comments filed on behalf of Dean in response to the Recommended Decision supported the Department's decision to deter the practice of de-pooling. However, Dean expressed reservations that adoption of Proposal 7 would be sufficient to adequately deter the practice of de-pooling in the Mideast marketing area. Dean also commented that the re-pooling standard for the month of February should be modified to 110 percent to account for additional days in January much like the re-pooling standard for the month of March was modified to account for the fewer days in February.

A witness appearing on behalf of Superior Dairy (Superior) testified in support of Proposal 4. Superior is a pool distributing plant regulated by the Mideast order. The witness said that Proposal 4 should be adopted because the de-pooling actions of some handlers are reducing the blend price paid to producers who regularly and consistently service the needs of the Class I market.

A witness appearing on behalf of OFU testified in support of Proposal 6. The witness said that current regulations allow handlers to take advantage of the Federal order program and not share income generated in the market with pooled producers. The witness supported adoption of Proposal 6 and stressed that adoption of the proposal would discourage manufacturing handlers from not pooling their milk receipts when it is to their financial advantage.

A second witness appearing on behalf of Dean testified in support of Proposals 4, 6, 7, and 8. The witness testified that Proposal 4 would encourage handlers to

pool their milk receipts in times of a price inversion since the decision to de-pool would result in a 12-month penalty. The witness said that adoption of Proposal 4 would also ensure that the de-pooled producer provided service to the Class I market by making substantial and consistent service to fluid distributing plants.

The second Dean witness characterized Proposal 8 as a less desirable alternative to Proposal 4. The difference in the two proposals, the witness said, is the number of months a producer must meet the 10-day touch base standard to be re-pooled—it is fewer under Proposal 8 and varies depending on the month in which the milk was de-pooled. In general, emphasized the witness, the effects of both proposals would be the same except that if Proposal 8 were adopted, the cost to a de-pooling handler and the benefit to continuously pooled producers would be less.

The second Dean witness testified that Proposal 7 and Proposal 6 are less desirable options to Proposals 4 and 8. According to the witness, if a 115 percent re-pooling standard were adopted it would take a handler who opted to de-pool 90 percent of its milk 17 months to re-pool all the handler's milk receipts. If a handler opted to de-pool 30 percent of its milk receipts, the witness added, it would only take 3 months to again pool all of its milk receipts. The witness emphasized that the larger the volume of milk a handler opted to de-pool, the longer the length of time a handler would need to requalify all its milk receipts and the more money it would cost the de-pooling handler. The witness concluded that Proposals 6 and 7 offered a different method for limiting de-pooling that would not be as effective as the method contained in Proposals 4 and 8.

A dairy farmer whose milk is pooled on the Mideast order testified in support of Proposals 4, 5, and 6. The witness testified that in April 2004 their farm lost $9,000 because of the reduced PPD that resulted from de-pooling. The witness urged the Department to adopt either Proposal 4, 5, or 6 to remedy de-pooling and to do so on an emergency basis.

A witness appearing on behalf of DFA/MMPA testified in support of Proposal 7. The witness said that Proposal 7 was designed to limit de-pooling by creating financial consequences for manufacturing handlers who de-pool their milk receipts. The witness testified that members of DFA/MMPA currently de-pool milk when it is to their advantage but emphasized that de-pooling causes market disorder and should be prohibited.

The DFA/MMPA witness said that de-pooling is not a new occurrence; however, the volatility of milk prices in recent years has caused more frequent price inversions and subsequent opportunities to de-pool. The witness referenced data presented at a similar proceeding held in the Central order that during the 84 month period from 1993 to 1999, there were 16 months with negative PPD's, 6 of which were in excess of a negative 50 cents per cwt. However, the witness noted that during the 60 month period from January 2000 through December 2004 the opportunity to de-pool had occurred 51 times.

The DFA/MMPA witness contended that de-pooling causes inequities because similarly situated handlers face different costs in procuring a milk supply. Class I milk is required to be pooled, the witness said, and distributing plants always have to share the additional value of their Class I milk sales with all pooled producers. However, the witness said, a manufacturing handler is not required to account to the pool at classified prices and can therefore retain the revenue generated from not pooling milk when price inversions occur. The witness asserted that manufacturing handlers use the additional revenue generated from de-pooling to pay a higher price to their producers while fluid handlers must use money from their profit margins to pay a competitive price. In this regard, the witness said, Class I handlers are at a disadvantage in competing with manufacturing handlers for a producer milk supply.

Relying on Market Administrator statistics, the DFA/MMPA witness illustrated that in April 2004 manufacturing handlers that may have chosen to not pool their milk receipts were able to keep $3.78 more per hundredweight than a fluid handler on all their de-pooled milk and could use the proceeds to pay dairy farmers. The witness showed how a supplying handler that delivered one load of milk a day for a month to a Class I plant, would have received $56,700 less than a manufacturing handler who could opt to de-pool their milk receipts. Relying on Market Administrator statistics, the witness testified that 649.3 million pounds of milk was de-pooled in April 2004. According to the witness, if that milk had been pooled the PPD paid to all producers would have been $1.66 per cwt higher.

The DFA/MMPA witness testified that Proposal 7 would limit the amount of milk a handler could pool to 115 percent of the handler's prior month pooled milk volume. The witness insisted that the 115 percent standard would create the economic incentive necessary to keep an adequate reserve supply of milk pooled on the order while accommodating reasonable levels of growth in a handler's month-to-month production and other seasonal production fluctuations. The witness noted that the Market Administrator should be given the discretion to disqualify de-pooled milk from pooling if the Market Administrator believes that the handler was trying to circumvent the pooling standards.

The DFA/MMPA witness testified that emergency marketing conditions exist without a deterrent to de-pooling that warrant the omission of a recommended decision. The witness was of the opinion that the volatile dairy product markets that gave rise to rapid price increases and price inversions will continue and therefore, should be addressed in an expedited manner.

A post-hearing brief submitted on behalf of DFA/MMPA reiterated their support of Proposal 7. The brief stressed that adoption of Proposal 7, while not completely eliminating a handler's ability to de-pool, would reduce the total volume of de-pooled milk. DFA/MMPA suggested a modification to Proposal 7 in their post-hearing brief to establish a limit on the volume of milk a handler could pool in March to 120 percent of the their total volume of milk pooled during the prior month. DFA/MMPA believed that this modification would better accommodate and account for the fewer number of days in the month of February.

The DFA/MMPA brief argued that Proposals 4 and 5 are not appropriate for the Mideast order because they call for stringent and unnecessary changes in the order's pooling provisions. The brief stressed that the intention of Proposal 7 was to improve the pooling standards of the order but not in a manner that would necessitate a change to a handler's business operations.

Comments filed on behalf of DFA/MMPA; Dairylea; National Farmers Organization, Inc.; and Land O'Lakes, hereinafter referred to as DFA, et al., expressed their support of the proposed re-pooling standards. DFA, et al., clarified that the intent of Proposal 7 was to constrain the practice of de-pooling while still encouraging additional milk shipments for Class I use. DFA, et al., proposed that the re-pooling standard be amended to exempt milk delivered to distributing plants in excess of the previous month's pooled volume instead of the proposed standard that exempts milk delivered to distributing plants in excess of the

volume classified as Class I in the prior month. A witness appearing on behalf of Ohio Farm Bureau Federation testified in support of Proposal 7. The witness was of the opinion that if the current pooling provisions are not amended to deter the practice of de-pooling, prices received by farmers who reliably service the Class I market would decrease. The witness claimed that handlers who de-pool milk do not share the revenues generated from de-pooling with all pooled producers which lowers returns to producers who are consistently serving the Class I market. The witness added that Federal order hearings concerning de-pooling have been held in other Federal orders. The witness claimed that if de-pooling is not addressed in the Mideast order, milk from other Federal orders may seek to be pooled on the Mideast order. In this regard, the witness said that adoption of Proposal 7 is necessary to ensure that blend prices received by producers who are consistently pooled are not further eroded.

A witness appearing on behalf of Prairie Farms Dairy (Prairie Farms) testified in support of Proposal 7. Prairie Farms is a member owned Capper-Volstead cooperative that pools milk on the Mideast order. The witness testified that since Prairie Farms is required to pool all milk utilized at their distributing plants, all revenues generated from their Class I sales are shared with all pooled producers. The witness noted that Prairie Farms does de-pool its manufacturing milk when it is advantageous but emphasized that this practice is detrimental to producers who are consistently serving the Class I market. The witness urged adoption of Proposal 7 but also offered support for Proposal 6.

Seven dairy farmers whose milk is pooled on the Mideast order testified in support of Proposal 7. The dairy farmers testified that the purpose of the Federal order system is to ensure that pooled producers receive an equitable share of the revenue generated from all classes of milk. The witnesses were of the opinion that the practice of de-pooling caused them to lose a substantial amount of potential income. These witnesses stressed that if manufacturing handlers choose to pool their milk receipts in months when the PPD is positive, it is only equitable for them to pool their milk receipts when the PPD is negative. The witnesses believed that de-pooling results in producers who consistently service the Class I needs of the market receiving a lower blend price than they otherwise would have if all milk had been pooled. The witnesses maintained that because de-pooling erodes revenues received by pooled producers, the Department should address de-pooling on an emergency basis.

Another dairy farmer witness whose milk is pooled on the Mideast order testified in support of limiting de-pooling but did not offer support for any specific proposal. The witness said that as a result of de-pooling in the months of April and May 2004, their farm lost over $6,000. The witness was of the opinion that the Department should act on an emergency basis since the ability for manufacturing handlers to de-pool milk will continue to lower the proceeds received by producers that service the needs of the Class I market.

A witness appearing on behalf of Smith Dairy Products Company testified in support of proposals limiting de-pooling. Smith operates two distributing plants located in the Mideast marketing area. The witness said that the practice of de-pooling manipulates the intent of the Federal milk order system and results in the lowering of the blend prices paid to producers that service the needs of the Class I market. The witness did not offer support for a specific proposal but urged the Department to eliminate the ability to de-pool milk on the Mideast order on an emergency basis.

A witness appearing on behalf of Continental testified in opposition to Proposals 4, 6, 7, and 8. The witness opposed adoption of these proposals because they would allow milk delivered to a distributing plant to be immediately re-pooled and maintained that Proposal 5 would be a better option for the marketing area.

A witness appearing on behalf of White Eagle Cooperative Federation (White Eagle) testified neither in support of or opposition to Proposal 7. White Eagle is a federation of cooperatives and independent producers that markets approximately 150 million pounds of milk per month on the Mideast order. The witness asserted that adoption of the 115 percent pooling standard could limit smaller cooperatives from increasing their dairy farmer membership. The witness testified that adoption of Proposal 7 would allow for an increase in the volume of milk pooled above 115 percent if a producer who was pooled on another Federal order sought to become pooled on the Mideast order but would not make the same exception for a producer continually pooled on the Mideast order who increases production. The witness said that if de-pooling were limited on the Mideast order, de-pooled milk would seek to be pooled on other Federal orders where there are no de-pooling restrictions. The witness was of the opinion that the de-pooling issue should be handled on a national basis and with a recommended decision where the public could submit comments. These positions were reiterated in their post-hearing brief filed on behalf of White Eagle, Superior Dairy, United Dairy, Guggisberg Cheese, Brewster Dairy, and Dairy Support, Inc.

A post-hearing reply brief submitted on behalf of Dean expressed opposition to Proposal 5. Dean argued that Proposal 5 was too restrictive because it contained no provision to enable de-pooled milk to become immediately re-pooled if it was truly needed to service the fluid market later in the month.

Comments filed on behalf of Foremost Farms USA Cooperative (Foremost) and Alto Dairy Cooperative (Alto), hereinafter, referred to as "Foremost, et al.", took exception to the Recommended Decision. Foremost, et al., are member owned Capper-Volstead cooperatives that market milk and supply distributing plants in the Mideast marketing area. Foremost, *et al.*, took exception to the proposed regulations that would require a producer to be continuously pooled on another Federal order for the previous 3 months to be exempted from the re-pooling standards. Their exception asserted that a producer should be allowed to have some de-pooled milk receipts during the previous 3 months and still be exempted from the re-pooling standards of the Mideast order.

Comments filed on behalf of Family Dairies USA took exception with amendments proposed in the Recommended Decision. Family Dairies is a member owned Capper-Volstead cooperative whose milk is pooled on the Mideast order. Family Dairies wrote that the Recommended Decision did not address the cause of negative PPD's—class price inversions—and therefore opposed the adoption of the proposed amendments.

Comments were filed on behalf of Associated Milk Producers, Inc.; Bongards' Creameries; Ellsworth Cooperative Creamery; Family Dairies USA; First District Association; Davisco Foods; Valley Queen Cheese Company; and Wisconsin Cheese Makers Association, hereinafter referred to as the "AMPI Group." The AMPI Group took exception to the re-pooling standard proposed by the Department and asserted that the proposed standard did not solve the underlying cause of de-pooling. The AMPI Group asserted that the Department arbitrarily refused to consider proposals that would end the time lag in classified price announcements as a remedy to de-pooling and did not consider alternative

proposals that would be less burdensome to handlers or requests to address the practice of de-pooling on a national basis.

The AMPI Group commented that provisions which allow the Market Administrator to waive the re-pooling standard for handlers that experience a significant change in their milk supply due to unusual circumstances should be more specific as to what constitutes an unusual circumstance. The AMPI Group argued that small manufacturers may experience a growth in their milk supply that would not be considered an unusual circumstance and that such a situation should not cause a handler to be penalized under the re-pooling standard. The AMPI Group also cited various legal issues as reasons why the Department should not adopt the re-pooling standards. All Federal milk marketing orders require the pooling of milk received at pooled distributing plants—which is predominately Class I milk—and all pooled producers and handlers on an order share in the additional revenue arising from higher valued Class I sales. Manufacturing handlers and cooperatives of Class II, III and IV uses of milk who meet the pooling and performance standards make all of their milk receipts eligible to be pooled and usually find it advantageous. Manufacturing handlers and cooperatives who supply a portion of their total milk receipts to Class I distributing plants receive the difference between their use-value of milk and the order's blend price. Federal milk orders, including the Mideast order, establish limits on the volume of milk eligible to be pooled that is not for fluid uses primarily through diversion limit standards. However, manufacturing handlers and cooperatives are not required, as are Class I handlers, to pool all their eligible milk receipts.

According to the record, manufacturing handlers and cooperatives have opted to not pool their milk receipts when the manufacturing class prices of milk are higher than the order's blend price—commonly referred to as being "inverted." During such months, manufacturing handlers and cooperatives have elected to not pool all of their eligible milk receipts because doing so would require them to pay into the PSF of the order, the mechanism through which handler and producer prices are equalized. When prices are not inverted, these handlers would pool all of their eligible receipts and receive a payment or draw from the PSF. In receiving a draw from the PSF, such handlers have sufficient money to pay at least the order's blend price to their supplying dairy farmers.

When manufacturing handlers and cooperatives opt to not pool all of their eligible milk receipts in a month, they are essentially avoiding a payment to the PSF. This, in turn, enables them to avoid the marketwide sharing of the additional value of milk that accrues in the higher-valued uses of milk other than Class I. When the Class I price again becomes the highest valued use of milk, or when other class-price relationships become favorable, the record reveals that these same handlers opt to again pool their eligible milk receipts and draw money from the PSF. It is the ability of manufacturing handlers and cooperatives opting to not pool milk and thereby avoid the marketwide sharing of the revenue accruing from non-Class I milk sales that is viewed by proponents as giving rise to disorderly marketing conditions. According to proponents, producers and handlers who cannot escape being pooled and priced under the order are not assured of equitable prices.

The record reveals that since the implementation of Federal milk marketing order reform in January 2000, and especially in more recent years, large and rapid increases in manufactured product prices during certain months have provided the economic incentives for manufacturing handlers to opt not to pool eligible milk on the Mideast order. For example, during the 3-month period of February to April 2004, the Class III price increased over 65 percent from $11.89 cwt to $19.66 cwt. During the same time period, total producer milk pooled on the Mideast order decreased by nearly 40 percent from 1.4 billion pounds to 873 million pounds. When milk volumes of this magnitude are not pooled the impacts on producer blend prices are significant. Producers who incur the additional costs of consistently servicing the Class I needs of the market receive a lower return than would otherwise have been received if they did not continue to service the Class I market. Prices received by dairy farmers who supplied the other milk needs of the market are not known. However, it is reasonable to conclude that prices received by dairy farmers were not equitable or uniform.

The record reveals that "inverted" prices of milk are generally the result of the timing of Class price announcements. Despite changes made as part of Federal milk order reform to shorten the time period of setting and announcing Class I milk prices and basing the Class I price on the higher of the Class III or Class IV price to avoid price inversions, large month-to-month price increases in Class III and Class IV product prices sometimes trumped the intent of better assuring that the Class I price for the month would be the highest-valued use of milk. In all orders, the Class I price (and the Class II skim price) is announced prior to or in advance of the month for which it will apply. The Class I price is calculated by using the National Agricultural Statistics Service (NASS) surveyed cheese, butter, nonfat dry milk and dry whey prices for the two most current weeks prior to the 24th day of the preceding month and then adding a differential value to the higher of either the advanced Class III or Class IV price.

Historically, the advance pricing of Class I milk has been used in all Federal orders because Class I handlers cannot avoid regulation and since they are required to pool all of their Class I milk receipts they should know their product costs in advance of notifying their customers of price changes. However, milk receipts for Class III and IV uses are not required to be pooled; thus, Class III and IV product prices (and the Class II butterfat value) are not announced in advance. These prices are announced on or before the 5th of the following month. Of importance here is that manufacturing plant operators and cooperatives have the benefit of knowing all the classified prices of milk before making a decision to pool or not pool eligible receipts.

The record reveals that the decision of manufacturing handlers or cooperatives to pool or not pool milk is made on a month-to-month basis and is generally independent of past pooling decisions. Manufacturing handlers and cooperatives that elected to not pool their milk receipts did so to avoid making payments to the PSF and they anticipated that all other manufacturing handlers and cooperatives would do the same. However, the record indicates that normally pooled manufacturing handlers and cooperatives met the pooling standards of the order to ensure that the Class I market was adequately supplied and that they established eligibility to pool their physical receipts including diversions to nonpool plants. Opponents to proposals to deter de-pooling are of the view that meeting the pooling standards of the order and deciding how much milk to pool are unrelated events. Proponents took the view that participation in the marketwide pool should be based on a long-term commitment to supply the market because in the long-term it is the sales of higher priced Class I milk that adds additional revenue to the pool.

The producer price differential, or PPD, is the difference between the Class III price and the weighted average value of all Class I, II and IV milk pooled. In essence, the PPD is the residual revenue remaining after all butterfat, protein and other solids values are paid to producers. If the pooled value of Class I, II and IV milk is greater than the Class III value, dairy farmers receive a positive PPD. While the PPD is usually positive, a negative PPD can occur when class prices rise rapidly during the 6-week period between the time the Class I price is announced and the time the Class II butterfat and III and IV milk prices are announced. When manufacturing prices fall, this same lag in the announcement of class prices yields a positive PPD.

As revealed by the record, when manufacturing plants and cooperatives opted to not pool milk because of inverted price relationships, PPD's were much more negative. When this milk is not pooled, a larger percentage of the milk remaining pooled will be the "lower" priced Class I milk. When manufacturing milk is not pooled the weighted average value of milk decreases relative to the Class II, III or IV value making the PPD more negative. For example, record evidence demonstrated that in April 2004, a month when a sizeable volume of milk was not pooled, the PPD was a negative $3.78 per cwt. If all eligible milk had been pooled, the PPD would have been $1.66 per cwt higher or a negative $2.12 per cwt. This $1.66 per cwt represents the additional burden borne by those producers who remain pooled.

The record reveals that when manufacturing handlers and cooperatives opt to not pool milk, unequal pay prices may result to similarly located dairy farmers. For example, Dean noted that when a cooperative delivers a high percentage of their milk receipts to a distributing plant, it lessens their ability to not pool milk and makes them less competitive in the marketplace relative to other producers and handlers. Other evidence in the record supports conclusions identical to Dean that when a dairy farmer or cooperative is able to receive increased returns from shipping milk to a manufacturing handler during times of price inversions, other dairy farmers or cooperatives who may have shipped more milk to a pool distributing plant are competitively disadvantaged.

The record of this proceeding reveals that the ability of manufacturing handlers and cooperatives to not pool all of their eligible milk receipts gives rise to disorderly marketing conditions and warrants the establishment of additional pooling standards to safeguard marketwide pooling. Current pooling provisions do not require or prohibit handlers and cooperatives from pooling all eligible milk receipts. However, the record reveals that when handlers and cooperatives opt to not pool milk, inequities arise among producers and handlers that are contrary to the intent of the Federal milk marketing order program—maintaining orderly marketing conditions.

The record contains extensive testimony regarding the effects on the milk order program resulting from advance pricing and the priority the milk order program has placed on the Class I price being the highest valued use of milk. It remains true that the Class I use of milk is still the highest valued use of milk notwithstanding those occasional months when milk used in usually lower-valued classes may be higher. This has been demonstrated by an analysis of the effective Class I differential values—the difference in the Class I price at the base zone of Cuyahoga County, Ohio, and the higher of the Class III or Class IV price—for the 65-month period of January 2000 through May 2005 performed by USDA.[1] These computations reveal that the effective monthly Class I differential averaged $1.97 per cwt. Accordingly, it can only be concluded that if the longer-term Class I sales continue to be the source of additional revenue accruing to the pool even when, in some months, the effective differential is negative.

Price inversions occur when the wholesale price for manufactured products rises rapidly indicating a tightening of milk supplies to produce those products. It is for this reason that the Department chose the higher of the Class III or Class IV prices as the mover of the Class I price. Distributing plants must have a price high enough to attract milk away from manufacturing uses to meet Class I demands. As revealed by the record, this method has not been sufficient to provide the appropriate price signals to assure an adequate supply of milk for the Class I market. Accordingly, additional measures are needed as a means of assuring that milk remains pooled and thus available to the Class I market. Adoption of Proposal 7 is a reasonable measure to meet the objectives of orderly marketing.

This final decision does find that disorderly marketing conditions are present when producers do not receive uniform prices. Handlers and cooperatives opting to not pool milk do not account to the pool at the classified use value of those milk receipts. They do not share in all the additional costs and burdens with those producers who are pooled and who are incurring the costs of servicing the Class I needs of the market. This is not a desired or reasonable outcome especially when the same handlers and cooperatives will again pool all of their eligible receipts when class-price relationships change in a subsequent month. These inequities borne by the market's producers are contrary to the intent of the Federal order program's reliance on marketwide pooling—ensuring that all producers supplying the market are paid uniform prices for their milk regardless of how the milk of any single producer is used.

Exceptions filed by the AMPI Group and Foremost, et al., asserting that the re-pooling standards do not address the cause of de-pooling—price inversions—are unpersuasive. It is reasonable that the order contain pooling provisions intended to deter the disorderly conditions that arise when de-pooling occurs. Such provisions maintain and enhance orderly marketing. Accordingly, this final decision finds it reasonable to adopt provisions that limit the volume of milk a handler or cooperative may pool during the months of April through February to 115 percent of the total volume pooled by the handler or cooperative in the prior month and to 120 percent of the prior month's pooled volume during March. Adoption of this standard will not prevent manufacturing handlers or cooperatives from electing to not pool milk. However, it should serve to maintain and enhance orderly marketing by encouraging participation in the marketwide pooling of all classified uses of milk.

A modification proposed by Dean in their exceptions to the Recommended Decision to lower the re-pooling standard in February to 110 percent is denied. This modification was not discussed at the hearing. The 115 percent re-pooling standard should adequately deter excessive de-pooling. However, should de-pooling abuses continue under the new re-pooling standards the Department can be petitioned to adjust the standards.

Despite exceptions filed by the AMPI Group, this decision continues to adopt provisions that grant authority to the Market Administrator to waive the re-pooling standard for a bloc of milk due to unusual circumstances. This discretion has been previously granted to the Market Administrator to amend or waive other pooling standards and it is

[1] Official notice is taken of data and information published in Market Administrator Bulletins, as posted on individual Market Administrator Web sites.

reasonable to make a similar accommodation here. Consideration was given on whether de-pooling should be considered at a national hearing with other, broader national issues of milk marketing. However, each marketing area has unique marketing conditions and characteristics that have area-specific pooling provisions to address those specific conditions. Because of this, pooling issues are considered unique to each order. Historically, pooling issues have been addressed on an order by order basis and, despite exceptions filed by the AMPI Group, this final decision continues to find that it would be unreasonable to address pooling issues, including de-pooling, on a national basis. Other objections by the AMPI Group that the Department should take into account a manufacturers cost of production are irrelevant in regards to the pooling standards of the order. The record does not support finding that manufacturers de-pool milk to recoup manufacturing costs that they otherwise cannot. The record clearly establishes that manufacturers de-pool their milk supply to avoid making a payment into the order's PSF. Nevertheless, manufacturing allowances, which are uniform in all Federal orders, are currently being addressed by the Department on a national basis (71 FR 545).

Some manufacturing handlers and cooperatives argued at the hearing and noted in exceptions to the Recommended Decision that their milk did perform in meeting the Class I needs during the month and this occurred before making their pooling decisions. They argue that the Class I market is therefore not harmed and that the intents and goals of the order program are satisfied. In response to these arguments, this decision finds that the practice of de-pooling undermines the intent of the Federal order program to assure producers uniform prices across all uses of milk normally associated with the market as a critical indicator of orderly marketing conditions.

Exceptions filed by Foremost, *et al.*, arguing that a producer should be allowed to de-pool some milk in each month and still be allowed to utilize the exception for producers or blocs of producers moving between orders is contrary to the goal of the re-pooling provision. If a producer were allowed to de-pool milk in one Federal order and subsequently re-pool in a second Federal order without limitation, the re-pooling standard would be severely undermined. As a matter of clarification, a producer can be de-pooled in one order and re-pooled in the Mideast order as part of the 115 percent re-pooling limitation, but no further exemption from the limitation would apply to this producer.

Handlers and cooperatives who de-pool purposefully do so to gain a momentary financial benefit (by avoiding making payments to the PSF) which would otherwise be equitably shared among all market participants. While the order's performance standards tend to assure that distributing plants are adequately supplied with fresh, fluid milk, the goals of marketwide pooling are undermined by the practice of de-pooling. Producers and handlers who regularly and consistently bear the costs of serving the Class I needs of the market will not equitably share in the additional value arising momentarily from non-fluid uses of milk. These same producers and handlers will, in turn, be required to share the additional revenue arising from higher-valued Class I sales in a subsequent month when class-price relationships change.

The five proposals considered in this proceeding to deter the practice of de-pooling in the Mideast order have differences. They all seek to address market disorder arising from the practice of de-pooling. However, this final decision does not find adoption of the three "dairy farmer for other market" proposals—Proposals 4, 5 and 8—reasonable because they would make it needlessly difficult for milk to be re-pooled and because their adoption may disrupt prevailing marketing channels or cause the inefficient movement of milk. Likewise, Proposal 6, which suggests restricting pooling in a month to 115 percent of the prior month's volume pooled by the handler, is not adopted. Adoption of this proposal would disrupt current marketing conditions beyond what the record justifies.

A request submitted by DFA, *et al.*, in their exceptions to the Recommended Decision to exempt all milk delivered to distributing plants in excess of the previous month's pooled volume regardless of its allocation is denied. Such a provision could result in the uneconomical movement of milk to circumvent the re-pooling standard.

Therefore, this final decision adopts Proposal 7 to limit the pooling of milk by a handler during the months of April through February to 115 percent of the total milk receipts the handler pooled in the prior month and to 120 percent of the prior month's pooled volume during March because it provides the most reasonable measure to deter the practice of de-pooling.

B. Producer Definition

A proposal published in the hearing notice as Proposal 3, seeking to specify the length of time a dairy farmer may lose Grade A status before losing producer status on the order, is not adopted. Proposal 3, offered by Dean, seeks to amend the *Producer milk* definition by explicitly stating that a dairy farmer may lose Grade A status for up to 21 calendar days per year before needing to requalify as a producer on the order. The Mideast order does not specify the length of time a dairy farmer may lose Grade A status before needing to requalify as a producer on the order.

Two witnesses appearing on behalf of Dean testified in support of Proposal 3. The Dean witnesses supported adoption of Proposal 3 to provide for 21 days in a year that a producer could lose Grade A approval before needing to reassociate with the Mideast order by making a delivery to a Mideast pool plant. By providing for an exact number of days, the witnesses emphasized, a loss of Grade A status could not be used as a method to de-pool or to circumvent the pooling standards. The witnesses believed that the Market Administrator should be granted the authority to extend the length of time a producer could lose Grade A status before they would have to requalify if the loss of status was due to circumstances beyond the producers control. A post-hearing brief submitted on behalf of Dean reiterated their belief that this change was necessary to ensure that the re-pooling standards would not be circumvented.

Comments filed on behalf of Dean took exception to the Department's denial of Proposal 3 to define the term "temporary" in the producer milk definition. Dean maintained that a producer should bear the burden of establishing that their temporary loss of Grade A approval was not designed to avoid the new re-pooling standards.

The *Producer* definition of the Mideast order currently does not define the length of time a producer may lose Grade A status before needing to requalify for producer status on the order. The issue of qualifying for producer status is important since it determines which producers and which producer milk is entitled to share in the revenues arising from the marketwide pooling of milk on the Mideast order.

The definition of "temporary" used by the Market Administrator has accommodated the Mideast market by giving producers a reasonable amount of time to regain Grade A status without burdening the market with excessive touch-base shipments or recordkeeping

requirements. Limiting the time period a producer can lose Grade A status would require handlers and the Market Administrator to track the producer's loss of Grade A status throughout the year to determine when the 21 day limit is reached.

Despite exceptions filed by Dean requesting an exact definition of "temporary", this decision continues to find that the additional touch-base shipments that would be required for a dairy farmer to requalify for producer status on the order would cause uneconomic shipments of milk. Additionally, the increased recordkeeping requirements would burden not only the handlers but also the Market Administrator's office without contributing to the goals and application of the proposed amendments to the pooling standards contained in this decision. Other amendments adopted in this decision that grant the Market Administrator authority to disqualify milk for pooling if it is found that the handler attempted to circumvent the re-pooling standards provide an adequate safeguard against pooling abuses. Accordingly, Proposal 3 is not adopted.

2. Transportation Credits

A proposal offered by DFA, published in the hearing notice as Proposal 9 and modified at the hearing, seeking to establish a transportation credit provision is not adopted. Proposal 9 seeks to establish a year-round transportation credit on shipments of milk from farms to distributing plants at a rate of $0.0031 per cwt per mile. A separate rate of $0.0024 per cwt per mile for eligible milk movements in the State of Michigan was offered as a modification by MMPA. The credit would not be applicable on the first 75 miles of movement and would be limited to 350 miles. The Mideast order does not currently provide for transportation credits.

A witness appearing on behalf of DFA/MMPA testified that the establishment of a transportation credit in the Mideast order is warranted because the cost of supplying the Class I market is not being equitably borne by all pooled producers. The witness testified that all producers benefit from Class I sales because the revenue generated is distributed through the marketwide pool. In particular, the witness said that all pooled producers were not equitably sharing in the costs of transporting supplemental supplies to meet Class I demand. The witness was of the opinion that Federal order prices should reimburse producers for the cost of transporting milk supplies to Class I plants when needed. The witness emphasized that Proposal 9 is designed to equitably distribute some of the cost of transporting those Class I milk supplies with all pooled producers.

The DFA/MMPA witness explained that the proposed exemption of the first 75 miles of eligible milk movement recognizes the producer's responsibility to deliver their milk to the market. The 75 mile exclusion was appropriate, the witness contended, because in the two northern reserve supply regions of Michigan and northern Ohio, the average distance milk travels to a distributing plant is 71 and 74 miles, respectively. The witness also said that a maximum applicable milk movement of 350 miles is a reasonable safeguard to prevent milk from traveling great distances solely to receive the transportation credit. The DFA/MMPA witness also noted that the Market Administrator should be given the discretion to adjust the transportation credit rate if market conditions warrant. The witness asserted that the market's blend price would be reduced by approximately $0.0297 per cwt per month if Proposal 9 was adopted. The witness maintained that a small reduction in the blend price received by farmers to cover a transportation credit was justified because of the benefit they would receive from having Class I plants fully supplied.

The DFA/MMPA witness contended that the northern region of the Mideast marketing area is a milk surplus region while the southern portion of the marketing area is usually a milk deficit region. The witness said that often surplus milk from the northern region of the marketing area must be transported long distances to supply the southern region for Class I use. Before Federal order reform, the witness asserted, the pricing structure of the Federal order program provided location adjustments that encouraged milk to move to Class I plants because the difference in the Class I differentials between the surplus and deficit areas provided producers sufficient reimbursement for the transportation costs incurred. However, the witness stressed, the Mideast order's current Class I differential values between surplus and deficit areas do not provide sufficient incentive to encourage this north to south movement of milk.

According to the DFA/MMPA witness, the cost to move a load of milk within the Mideast marketing area from a $1.80 Class I differential zone to a $2.20 Class I differential zone is $0.66 per cwt. However, the order's Class I differential's only provided a $0.40 per cwt incentive to transport that milk. The result, said the witness, is that Class I handlers have to pay additional money to fulfill their Class I needs although all pooled producers benefit from the higher returns generated from those Class I sales. The witness maintained that Federal order prices should cover all transportation costs for supplemental milk supplies and stressed that the proposed transportation credit only seeks to recoup 66 percent of that cost.

The DFA/MMPA witness provided over-order premium and cost information experienced by DFA when delivering supplemental milk supplies. The witness said that the average over-order premium charged for supplemental milk in 2004 was $1.72 per cwt. The witness explained that after subtracting out various customer credits, transportation costs, zone adjustments and give up charges, the net return, on average, was $0.71 per cwt to pay producers and cover the operating costs of the cooperative. The witness discussed the marketing decisions of DFA for October 2004, a month when supplemental supplies are historically needed. The witness said that in October 2004 DFA purchased over 21 million pounds of supplemental milk for delivery to distributing plants in the Mideast marketing area. After subtracting costs from the over-order premium, there was an average of $0.45 per cwt to pay producers and cover operating costs. The witness estimated that if Proposal 9 had been in place during October 2004, DFA would have received an $0.08 per cwt transportation credit on its supplemental supplies of Class I milk.

A post-hearing brief submitted on behalf of DFA/MMPA reiterated their position that transportation credits for the Mideast order are appropriate to ensure that all pooled producers will more equitably bear some costs in servicing the Class I market. The brief also argued that Proposal 9, as modified at the hearing, contained appropriate mileage limits to safeguard against handlers seeking to pool milk on the order solely for the purpose of receiving the credit.

The DFA/MMPA brief contended that the Mideast marketing area lacks sufficient supplemental supplies within the marketing area to service the Class I needs of the market. The brief reiterated that DFA/MMPA members are currently bearing a disproportionate share of the cost of supplying the Class I market because they have to transport milk long distances but are not reimbursed for the additional transportation costs incurred. The brief reiterated that while there are reserve supplies of milk in northern regions of

the marketing area that could be delivered to the deficit southern regions, the Class I differential does not sufficiently reimburse the additional transportation cost.

Comments filed on behalf of DFA, et al., took exception to the Department's denial of establishing transportation credits in the Mideast order. DFA, et al., argued that record evidence demonstrates that the Mideast order has clear deficit and surplus milk supply regions and asserted that despite only submitting data for October 2004, the testimony given at the hearing shows that the supplemental milk supplies are needed year-round in the Mideast marketing area. DFA, et al., took exception to the assertion that cooperatives should be able to recoup their additional transportation costs in the marketplace. DFA, et al., concluded that the record is replete with data demonstrating that producers supplying distant Class I plants do not receive uniform prices and requested that the Department establish a transportation credit provision to remedy this disorderly marketing condition.

A witness appearing on behalf of Foremost, et al., was of the opinion that a transportation credit on producer milk delivered to distributing plants was warranted because of the high cost of servicing Class I plants in the Mideast marketing area. The witness explained that on average, the distance from farms to distributing plants in the Mideast marketing area is longer than the distance between farms and manufacturing plants. Therefore, the witness was of the opinion that since producers pay the transportation cost for their milk, a producer delivering to a distributing plant will always receive a lower price for their milk because their transportation costs will be greater.

The Foremost, et al., witness also offered a modification to Proposal 9 that the proposed transportation credit should apply to milk transfers from pool supply plants to pool distributing plants. The witness testified that from 2002 through 2004, Foremost delivered approximately 20 million pounds of milk from their pool supply plants to pool distributing plants during the months of August through November. However, the witness said, under the provision as proposed by DFA/MMPA, these milk transfers would not have received the transportation credit. The witness noted that the Upper Midwest order provides for transportation and assembly credits for milk transferred from supply plants to distributing plants and that a transportation credit provision for the Mideast order should also be applicable for plant-to-plant milk movements.

The Foremost, et al., witness explained that the Mideast Milk Marketing Agency (MEMMA), of which Foremost is a member, markets the milk of its members and charges Class I handlers an over-order premium for milk delivered to their plants. The premium charges are negotiated between MEMMA and the individual distributing plants, the witness explained. The witness was of the opinion that to remain competitive with other suppliers and for their customers to remain competitive in the market, MEMMA cannot increase their over-order premiums to a rate that would compensate the costs of moving milk as would a transportation credit.

A post-hearing brief submitted on behalf of Foremost, et al., maintained their support of Proposal 9 with their modification to include plant-to-plant milk movements as eligible for a transportation credit. The brief contended including credits for plant-to-plant transfers is appropriate because, in their opinion, all Class I milk shipments to distributing plants should be eligible for a transportation credit.

A witness appearing on behalf of Michigan Milk Producers Association (MMPA) testified in support of establishing a transportation credit for Class I milk with a modification. The witness proposed that a lower rate be applicable for milk movements within the State of Michigan.

According to the MMPA witness, trucks used to haul milk within the State of Michigan are often larger because of higher gross weight limits allowed by the State. Typically, a trailer that can hold up to 90,000 pounds of milk, results in transportation costs of approximately $0.0036 per loaded mile, the witness noted. However, in keeping with testimony offered by DFA/MMPA for partial reimbursement of transportation cost, the witness said, Michigan distributing plants receiving milk from Michigan farms should receive a lower credit rate of $0.0024 per loaded mile. Otherwise, the witness said, Michigan handlers would recoup more than 67 percent of their actual transportation cost. The witness was of the opinion that the gain to producers from having all Class I needs satisfied outweighed the small reduction that a transportation credit would have on the blend price.

The MMPA witness testified that the Producer Equalization Committee (PEC), which was identified as the over-order pricing agency in Michigan, charges an over-order premium for Class I and II milk. According to the witness, these premiums over the previous 2 years have ranged from $1.40 to $1.65 per cwt. The witness explained that PEC pools its over-order revenue and equitably distributes it among participating producers. According to the witness, individual producers who incurred higher transportation costs for shipping milk a long distance will sometimes receive a larger share of the over-order revenue.

The MMPA witness testified in opposition to the Foremost, et al., modification to provide transportation credits on plant-to-plant milk movements. The witness argued that transportation credits should be used to promote efficient movements of milk and that shipping milk directly from farms to distributing plants in the Mideast marketing area is the most efficient movement. The witness was of the opinion that data provided by the Market Administrator demonstrated that there are adequate reserve supplies located within reasonable distances for farm-to-distributing plant deliveries. The witness asserted that providing a transportation credit on milk transfers between plants would encourage milk to be pooled from plant locations far from the marketing area and would inappropriately qualify producers—who would not be reliable suppliers of milk for the Class I needs of the Mideast market—to be pooled on the order. A post-hearing brief submitted on behalf of MMPA reiterated their support for establishing a transportation credit for Class I milk as they modified it during the hearing and opposition to including milk delivered from pool supply plants to pool distributing plants.

A brief submitted on behalf of Dean expressed support for adopting a transportation credit provision with a modification. The brief said that providing a transportation credit to reimburse the cost of supplying the Class I market is appropriate, but expressed concern with exempting the proposed first 75 miles of milk movement from receiving the credit. Dean believed that such an exemption discriminates against local farmers that supply Class I plants.

The Dean brief also asserted that if producer milk receives a transportation credit for supplying the Class I market, milk from that same farm should not be permitted to divert to a plant that is located outside the Mideast marketing area. The brief explained that milk diverted to plants outside the marketing area should be viewed as "dairy farmer for other markets" milk. While Dean acknowledged that such treatment of out-of-area diverted milk is a major change to Proposal 9, their brief

nevertheless proposed that for milk diverted to out-of-area plants from the same farm that milk receives a transportation credit, such milk should not count as shipments for the purpose of meeting the order's touch-base standard.

Seven dairy farmers whose milk is pooled on the Mideast order testified in support of establishing a transportation credit for Class I milk. Five of the dairy farmers were members of cooperatives and two were independent dairy farmers. The dairy farmers were of the opinion that the entire market should bear the costs associated with serving the Mideast Class I market, not solely the cooperatives that provide supplemental supplies to the order's distributing plants.

A witness appearing on behalf of OFU testified in opposition to adopting transportation credits. The witness said that a transportation credit would discourage the use of local milk to supply Mideast order pool plants.

A witness appearing on behalf of Prairie Farms testified in opposition to adopting transportation credits for Class I milk. The witness said that the modified transportation credit proposals would provide no benefit to Prairie Farms members who supply distributing plants because most of their producers are located less than 75 miles from the plant. The witness contended that transportation credits in the Mideast order would lead to inefficient milk movements for the sole purpose of receiving a credit.

A witness appearing on behalf of Smith Dairies testified in opposition to adopting transportation credits for Class I milk. The witness was of the opinion that providing a transportation credit would reduce the blend price paid to pooled producers who consistently supply distributing plants. The witness stressed that handlers who have supply agreements with distributing plants should account for their transportation costs of supplemental supplies and not ask the government for regulatory relief. The witness also asserted that the handler's business model should account for all transportation costs of milk from the farm to the retail customer. The witness was of the opinion that transportation credits could give a competitive advantage to those handlers that receive the credit. The witness said that when Smith Dairies purchases supplemental supplies, the price negotiated for the supplemental supplies does cover transportation costs and a transportation credit would be additional reimbursement.

A brief submitted on behalf of Continental expressed opposition to the transportation credit provision. Continental believed that adopting Proposal 9 would only benefit the proponents of the proposal and would reduce the blend price paid to close-in producers who supply a distributing plant. The brief stated that Continental's major concern was that the credit would be paid by the handlers with no guarantee that the credit would be transferred to a non-cooperative producer who incurred hauling costs. Continental was of the opinion that adoption of the proposal could pressure non-members into joining a cooperative and thereby limit producer choices as to where they can market their milk.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders to contain provisions for making payments to handlers for performing services that are of marketwide benefit. In this context, a marketwide service payment is a charge to all producers whose milk is pooled on the order, regardless of the use classification of such milk. The payment, in the form of a credit, is deducted from the total value of all milk pooled before computing the order's blend price. The AMAA identifies services that may be of marketwide benefit to include, but are not limited to: (1) Providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers; (2) handling on specific days quantities of milk that exceed quantities needed by handlers; and (3) transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

Proposal 9, as proposed and modified by DFA/MMPA seeks to establish a transportation credit as a marketwide service payment for milk shipped directly from dairy farms to distributing plants. The credit would only be applicable to milk classified as Class I and would be paid at a rate of $0.0031 per cwt per mile. The credit would not apply to the first 75 miles of applicable milk movements because this is the typical distance milk moves from farm to distributing plants in the marketing area. Receipt of the credit would be limited to not more than 350 miles because the Class I needs of the marketing area are satisfied without the need to reach further for a supply. In light of testimony that higher gross vehicle weight limits are provided in the State of Michigan, MMPA proposed a modification to establish a separate and lower transportation credit rate of $0.0024 per cwt per mile for intra-state milk movements from farms to distributing plants in the State of Michigan. Foremost, *et al.*, sought to expand the adoption of transportation credits for milk transfers between supply plants and distributing plants because milk transferred from supply plants, like direct-shipped milk, also serves the Class I market and should therefore be eligible for a transportation credit. This modification was not supported by DFA or MMPA, the proponents of Proposal 9.

An example of a Federal milk marketing order that currently provides for a marketwide service payment is the transportation and assembly credits employed in the Upper Midwest milk marketing order. The transportation and assembly credit provisions of the Chicago Regional order were carried into the provisions of the current Upper Midwest order as part of Federal order reform. The transportation credit feature of the provision provides transporting handlers with a credit of $0.028 per cwt per mile for milk transfers from pool supply plants to pool distributing plants. The credit is deducted from the total value of all milk pooled on the order. Because the transportation credit reduces the total dollar value of the milk pooled, it results in a lower blend price paid to all producers.

These provisions were first implemented in 1987 to ensure that the costs of serving the Class I market of the Chicago Regional marketing area were more equitably shared among all market participants that benefited from the additional revenue generated from Class I sales. Because of the very liberal pooling standards of the Upper Midwest order, much of the milk is pooled through the diversion process by having delivered 1 day's production to a pool plant. Since such milk is then pooled on a continuing basis, it is considered equitable that such milk bears some of the cost of supplying the Class I market on a continual basis. The credit was maintained in the larger consolidated Upper Midwest order for the same reasons. The transportation credit, as proposed and modified by proponents in this proceeding, differs from the transportation credit provision of the Upper Midwest order. The principal difference is that as proposed, the credit would be paid to the receiving handler for milk delivered direct from farms to distributing plants.

The dairy-farmer cooperative proponents argue that in their capacity as producers they are bearing an

inequitable share of the cost of supplying the supplemental needs of the marketing area's Class I market. In this regard, they assert that while all pooled producers are benefiting from Class I sales in the market, cooperative member producers supply a greater percentage of supplemental milk to Class I plants, and thus conclude that they are inequitably bearing the cost of providing supplemental supplies during certain times of the year.

The cooperative witnesses contend that when independently supplied distributing plants need supplemental supplies, such supplemental supplies are acquired from cooperatives. However, the cooperatives over-order premiums have been determined well before the start of the months when supplemental milk supplies are needed without adjusting for the generally farther distance any given particular load of milk must be transported. Even though proponents seek transportation credits year-round, the evidence reveals that it is the additional cost burden they bear providing supplemental milk supplies in the fall months, using October 2004 as a representative month, which Proposal 9 seeks to address. The basis of the argument advanced by the proponents was that without a transportation credit, meaningful cost recovery is not otherwise obtainable from receiving handlers. The record evidence does not support concluding that this burden is experienced in every month of the year.

The proponent cooperatives also asserted that the Class I differentials of the Mideast marketing area do not offer sufficient incentive to attract Class I milk to distributing plants in certain portions of the Mideast area. This failure, the proponent cooperatives say, places them as Class I suppliers at a competitive disadvantage relative to other Class I suppliers who are not supplying supplemental needs. The cooperatives proposed the establishment of a transportation credit provision as a means of offsetting a portion of the total additional cost of supplying Class I plants that the Class I differentials do not adequately compensate.

The proponents noted that the structure of the Mideast market, namely plant consolidation, diminished milk supplies in certain areas and transportation costs have increased since the Class I differentials were implemented in 2000. Amending the Class I differentials to more equitably reimburse Class I suppliers for transportation costs was another option considered but rejected by the proponents. They were of the opinion that changing the Class I price surface would have been very difficult and concluded that providing for transportation credits would be a satisfactory alternative to pricing problems. Proponents estimated that the impact of the proposed transportation credit on the Mideast order blend price per month, if adopted, would be a reduction of approximately $0.0297 per cwt.

Despite exceptions filed by DFA, *et al.*, this final decision continues to find that the record of this proceeding does not support the adoption of a transportation credit provision in the Mideast marketing area. The proponents requested a year-round transportation credit for Class I milk deliveries but did not offer sufficient evidence to justify establishment of the credit. Evidence presented at the hearing for the volume and cost of milk deliveries was limited to the fall month of October 2004. Testimony offered in support of the establishment of a transportation credit spoke primarily of the need for partial cost recovery for the transportation of supplemental supplies in the fall months. Because the record contains no data for other months it is difficult to determine to what extent distant milk is moving to the Mideast market as supplemental supplies. Additionally, it is not possible to determine what portion of the distant supplies revealed in the October data are displacing local milk at distributing plants for producer qualification purposes only.

The proponents did provide average cost and revenue data regarding supplemental milk supplies for 2004. The DFA witness testimony compared average milk procurement costs for October 2004 with average annual procurement costs. The two largest changes in procurement costs during the month of October, when compared to the annual average, were for "give-up charges" and for "supplemental hauling costs." If the annual average procurement costs are adjusted to remove the impact of supplemental procurement costs calculated for August through November, it is estimated that supplemental hauling costs increased $0.27 and give-up charges increased $0.22 on average in the fall when compared to the average cost as extrapolated for the remainder of the year. This analysis concludes that the give-up charges are a major portion of the costs associated with the supplemental supply. This may indicate that the performance standards for the order are too low. It should be noted that the diversion limits were reduced and the supply plant shipping standards were increased on an interim emergency basis as a result of this proceeding.

Due to the lack of data detailing the total cost of procuring supplemental supplies of milk and an estimate of the annual revenue generated by the transportation credit, no finding can be made that Proposal 9 should be adopted. Of particular concern is the possibility that the credit could be applicable to current and customary supply arrangements. This would result in a producer financed hauling subsidy on a year-round basis that is not related to any supplemental supplies or marketwide services.

Additionally, it is unclear why government intervention is needed to essentially require producers to supplement the milk procurement costs of handlers located in milk deficit sections of the marketing area. Such a transportation credit would disadvantage handlers located in non-deficit regions of the marketing area that wish to distribute packaged milk products in the deficit regions. The full cost of transporting packaged Class I milk into the deficit regions would be borne by the distributing handler but the cost of transporting bulk milk into the deficit region for subsequent processing would be partially funded by all producers through the transportation credit. The proponents' testimony throughout the proceeding stressed that they are unable to recoup their transportation costs from the marketplace. However, the evidence does not support these assertions. Both DFA and MMPA witnesses revealed that they are able to charge Class I handlers adequate over-order premiums to cover their transportation costs. The proponents asserted that these transportation costs should instead be recouped through marketwide pooling so that they can return a greater portion of the over-order premium to their members. The additional transportation cost of supplemental milk supplies is recovered from handlers who benefit by having such milk made available to satisfy demands.

Cooperatives who deliver supplemental supplies to distributing plants are providing those handlers with the benefit of a supply to meet their demands. However, in return the cooperative receives the benefit of an over-order premium to cover any additional costs it may incur and, if possible, return a higher price to its members. The cooperative also benefits in that these supplemental deliveries are used to satisfy the cooperative's long-term performance standards. It is not reasonable to lower the blend prices received by all dairy farmers when

transportation costs are adequately recovered from the Class I handler who needs the milk to meet demands.

This final decision continues to find that government intervention through the adoption of the proposed year-round transportation credit provision is not warranted. The record of this proceeding does reveal that additional costs can be recouped in the marketplace without such intervention.

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 Mideast order was first issued and when it was 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 agreement and the order, 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 area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, 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, the marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Mideast marketing area, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register**, in accordance with the procedures for the conduct of referenda [7 CFR 900.300–311], to determine whether the issuance of the order as amended and hereby proposed to be amended, regulating the handling of milk in the Mideast marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be March 2006.

The agent of the Secretary to conduct such referendum is hereby designated to be David Z. Walker, Mideast Market Administrator.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Dated: September 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Mideast Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and

conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the Recommended Decision issued by the Administrator, Agricultural Marketing Service, on February 15, 2006, and published in the **Federal Register** on February 22, 2006 (71 FR 9033), are adopted without change and shall be the terms and provisions of this order. The order follows.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. The authority citation for 7 CFR part 1033 is amended to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

2. Section 1033.13 is amended by adding a new paragraph (f), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(f) Producer milk of a handler shall not exceed the limits as established in § 1033.13(f)(1) through § 1033.13(f)(3).

(1) Producer milk for the months of April through February may not exceed 115 percent of the producer milk receipts of the prior month. Producer milk for March may not exceed 120 percent of producer receipts of the prior month; plus

(2) Milk shipped to and physically received at pool distributing plants and allocated to Class I use in excess of the volume allocated to Class I in the prior month; plus

(3) If a producer did not have any milk delivered to any plant as other than producer milk as defined under the order in this part or any other Federal milk order for the preceding three months; and the producer had milk qualified as producer milk on any other Federal order in the previous month, add the lesser of the following:

(i) Any positive difference of the volume of milk qualified as producer milk on any other Federal order in the previous month, less the volume of milk qualified as producer milk on any other Federal order in the current month, or

(ii) Any positive difference of the volume of milk qualified as producer milk under the order in this part in the current month, less the volume of milk qualified as producer milk under the order in this part in the previous month.

(4) Milk received at pool plants in excess of these limits shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b). Milk diverted to nonpool plants reported in excess of this limit shall not be producer milk. The handler must designate, by producer pick-up, which milk shall not be producer milk. If the handler fails to provide this information the provisions of § 1033.13(d)(6) shall apply.

(5) The market administrator may waive these limitations:

(i) For a new handler on the order, subject to the provisions of § 1033.13(f)(6), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(6) Milk may not be considered producer milk if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Marketing Agreement Regulating the Handling of Milk in the Mideast Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1033.1 to 1033.86 all inclusive, of the order regulating the handling of milk in the Mideast marketing area (7 CFR Part 1033 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of March 2006, ___hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, the contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 06–7495 Filed 9–6–06; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Wednesday,
September 13, 2006

Part VI

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA97

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under Title I, Part A, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These regulations are needed to implement statutory provisions regarding State, local educational agency (LEA), and school accountability for the academic achievement of limited English proficient (LEP) students and are needed to implement changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective October 13, 2006. Affected parties do not have to comply with the information collection requirements in § 200.6(b)(4)(i)(C) until the Department publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: These regulations implement statutory provisions of Title I, Part A of the ESEA, as amended by the NCLB Act (Pub. L. 107–110), enacted January 8, 2002. On June 24, 2004, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (69 FR 35462).

Under Title I of the ESEA, LEP students must be included in a State's assessment of academic achievement in reading/language arts and mathematics, and must receive appropriate accommodations and, to the extent practicable, native language assessments. LEP students must also be assessed annually for their proficiency in English in the modalities of listening, speaking, reading, and writing.

In the preamble to the NPRM, the Secretary discussed on pages 35463 and 35464 the major changes proposed to the current Title I regulations. These changes are summarized as follows:

- Under proposed § 200.6(b)(4), a State would be able to exempt "recently arrived LEP students" from one administration of the State's reading/language arts assessment. Proposed § 200.6(b)(4)(i) would define a recently arrived LEP student as a LEP student who has attended schools in the United States (not including Puerto Rico) for less than 10 months.
- Under proposed § 200.20(f)(1)(ii), a State would not be required to include the scores of recently arrived LEP students on the reading/language arts assessment (if taken) in decisions regarding adequate yearly progress (AYP), even if the student has been enrolled for a full academic year as defined by the State. However, these students could be counted as participants toward meeting the 95 percent participation requirement for AYP determinations in reading/language arts if they take an English language proficiency test. Under proposed § 200.20(f)(1)(ii), the State also would not be required to include the scores of recently arrived LEP students on the mathematics assessment in AYP decisions.
- Under proposed § 200.20(f)(2), a State would be permitted to include "former LEP" students within the LEP subgroup in making AYP determinations for up to two years after they no longer meet the State's definition for limited English proficiency.
- Proposed § 200.20(f)(2)(iii) would not allow States to include former LEP students when reporting achievement results on State and LEA report cards, as required under section 1111(h)(1)(C) and (2) of the ESEA.

In these final regulations, we are making several significant changes from the regulations proposed in the NPRM. These changes are as follows:

- *Definition of recently arrived LEP students.* The Secretary has made several changes in the definition of recently arrived LEP students. First, § 200.6(b)(4)(iv) defines a recently arrived LEP student as a student with limited proficiency in English who has attended schools in the United States for less than twelve months, rather than ten months as provided in the NPRM. The Secretary made this change to accommodate year-round schools. The Secretary notes that this definition focuses on length of time in United States schools, not length of time in the United States. The Secretary also notes that States may only exempt recently arrived LEP students from one administration of the State's reading/language arts assessment.

Second, the Secretary has clarified, in § 200.6(b)(4)(iv) that the phrase "schools in the United States" means only schools in the 50 States and the District of Columbia. It does not include schools in Puerto Rico, the outlying areas, or the freely associated states.

- *Instruction for recently arrived LEP students.* The Secretary has added § 200.6(b)(4)(i)(D) to emphasize that, notwithstanding the flexibility the regulations afford regarding assessment and accountability with respect to recently arrived LEP students, an LEA has the responsibility to provide appropriate instruction to these students to assist them in gaining English-language proficiency as well as content knowledge in reading/language arts and mathematics.
- *Reporting data on exemptions for recently arrived LEP students.* The Secretary has added § 200.6(b)(4)(i)(C) to require a State and its LEAs, on State and district report cards, respectively, to report annually the number of recently arrived LEP students exempted from one administration of the State's reading/language arts assessment.
- *Reporting data on former LEP students.* In § 200.20(f)(2)(iii), the Secretary has clarified how to report data relating to former LEP students on a State's or LEA's report card. This section clarifies that a State or LEA may include the scores of former LEP students as part of the LEP subgroup only for the purpose of reporting AYP. States and LEAs may not include former LEP students in the LEP subgroup on State or LEA report cards for any other purpose. The Secretary also has clarified that, if a State or LEA chooses to include the scores of former LEP students as part of the LEP subgroup for calculating and reporting AYP, the State or LEA must include the scores of all students defined as former LEP students in AYP calculations and reporting.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 50 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical or minor changes, and suggested changes that we are not authorized to make under the law.

Section 200.6 Inclusion of all students

Comment: Many commenters recommended changing the definition of a "recently arrived" LEP student to mean a LEP student who has attended schools in the United States for a period of time ranging from 12 months to five years or to tie the definition to a student's English language proficiency. Several others commented that a requirement based on the length of time a student has attended schools in the United States may be difficult to implement. One commenter recommended defining a "recently arrived" LEP student by the length of time the student has attended schools in a particular State.

Discussion: The purpose of these regulations is to allow a one-time exemption from content assessments in reading/language arts for those students who have had little instructional time in United States schools and are not proficient in English. The definition of recently arrived LEP students in the proposed regulations had two components: (1) A time limit, and (2) a limit on the number of times a student may be exempted from taking the reading/language arts assessment. We believed it was important to have a time limit to ensure that the one-time exemption is used only for LEP students who have recently arrived in schools in the United States, not for those students who have lived in the United States for a number of years and attended United States schools but who still possess limited proficiency in English.

The proposed regulations provided that recently arrived LEP students would be those who have attended schools in the United States for less than ten months before the State's reading/language arts test is administered. The purpose of the ten-month time limit was to provide a limit that was the equivalent of one year's worth of instruction. However, a ten-month time limit may not equate to a full year of instruction in certain circumstances, such as in a year-round school that operates over 12 months. The Secretary thus agrees that ten months may be confusing to implement in certain circumstances, and that changing the limit to 12 months maintains a limit of one year while affording flexibility and reducing any potential confusion. Even with this change, recently arrived LEP students are exempt from only one administration of the State's reading/language arts assessment.

While the Secretary recognizes that ascertaining the number of months of attendance in U.S. schools for recently arrived LEP students may be challenging for some States, in order to implement the flexibility related to recently arrived LEP students, a State must be able to identify such students. The Department intends to prepare guidance to assist States in making these determinations.

The definition of a recently arrived LEP student is not intended to include students who have lived in the United States for much of their lives and/or have attended United States schools for more than 12 months but have not learned sufficient English to demonstrate even limited proficiency.

Changes: Section 200.6(b)(4)(iv) has been amended to permit States to consider LEP students as being recently arrived if they have attended schools in the United States for less than 12 months.

Comment: Several commenters recommended that recently arrived LEP students also be exempt from the first administration of the State's mathematics assessment, as well as the science assessment required by 2007–2008.

Discussion: The final regulations require that recently arrived LEP students take the mathematics assessment. The Secretary believes that English language proficiency is not a prerequisite to participating in State mathematics assessments to the same extent as it is to participating in State reading/language arts assessments. Research provides evidence on accommodations that can be used with LEP students in mathematics and have been shown not to compromise the validity of the test and skills being measured when appropriately implemented.[1] With accommodations, recently arrived LEP students should be able to demonstrate sufficient knowledge of mathematics to provide useful information to teachers in order to inform instruction and to parents to let them know how their child is achieving. The regulations recognize that valuable information can be obtained to inform instruction when recently arrived LEP students take the mathematics assessment, but provide flexibility to States to exclude these scores from AYP calculations for one year.

While taking these assessments, recently arrived LEP students should receive the same accommodations as provided during classroom instruction. Science assessments are not required to be in place until the 2007–2008 school year and even then are not required to be included in AYP determinations.

Changes: None.

Comment: Two commenters expressed concern that the language in proposed § 200.6(b)(4)(i) could be misconstrued to mean that students who attended schools in Puerto Rico, a Commonwealth of the United States, may not be included in the population of recently arrived LEP students.

Discussion: In proposed § 200.6(b)(4)(i), the Secretary intended that students who come to the United States from Puerto Rico, where Spanish is the language of instruction, would not be considered to have been enrolled in United States schools while in Puerto Rico. Thus, LEP students from Puerto Rico would be included in the definition of recently arrived LEP students for purposes of these regulations.

Changes: Section 200.6(b)(4)(iv) has been changed to state explicitly that only schools in the 50 States and the District of Columbia are considered to be schools in the United States for purposes of these regulations. As a result, LEP students from Puerto Rico, the outlying areas, and the freely associated States are included in the definition of recently arrived LEP students.

Comment: Two commenters expressed concern that the regulations provide no incentive for LEAs to serve recently arrived LEP students and urged the Secretary to encourage LEAs to provide recently arrived LEP students with intensified instruction in both English language development and academic content so that the students will be better prepared to take the State's assessments the following year.

Discussion: The Secretary agrees that these regulations are not an invitation for LEAs to ignore either content or English language instruction for recently arrived LEP students merely because the students' scores may not be included in

[1] *See*, for example, Abedi and Leon, 1999; Abedi, Leon and Mirocha, 2001; Abedi *et al.*, 2000, for research on test accommodations and findings related to accommodations used on mathematics assessments with LEP students that allow students to demonstrate knowledge of content without unfair advantage or without compromising test validity.

accountability decisions. To the contrary, the purpose of the regulations is to afford LEAs time to provide instruction in English as well as content to recently arrived LEP students to prepare them to take the State's assessment in reading/language arts the following year.

Changes: Section 200.6(b)(4)(i)(D) has been added to explicitly state that nothing in these regulations relieves an LEA of its responsibility under applicable law to provide recently arrived LEP students with appropriate instruction to enhance their English language proficiency and their knowledge of content in reading/language arts during the period in which they may be exempt from the State's reading/language arts assessment.

Comment: Several commenters urged the Secretary to assist in research, development, validation, and dissemination of native language assessments.

Discussion: The Secretary recognizes the value of native language assessments in measuring the proficiency of limited English proficient students in reading, mathematics, science, and other core academic subjects that are anchored to rigorous State content standards. States may use funds under section 6111 of the ESEA, Grants for State Assessments and Related Activities, section 6112 of the ESEA, Grants for Enhanced Assessment Instruments, and consolidated State administrative funds to address this need and can join various consortia funded by the Department that are developing better strategies and instruments to include LEP students in State standards-based assessment systems. In addition, the Department has recently initiated a partnership with States to offer long-term support and technical assistance in order to help States improve content assessment options for LEP students, including native language assessments, assessments using plain language or simplified English, effective use of accommodations with LEP students and other approaches.

Changes: None.

Comment: Two commenters requested that the final regulations define Spanish native language assessments as always "practicable" and clarify the States' responsibilities to develop and administer native language assessments.

Discussion: Section 200.6(b) of the current Title I regulations requires that States assess limited English proficient students in a valid and reliable manner that includes reasonable accommodations and, to the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English. Although Spanish is the most common of the hundreds of different languages spoken by LEP students, Spanish native language assessments are not always practicable, nor do they always result in accurate and reliable information on what students know and can do. For example, a native language assessment may not yield valid and reliable results for students who are not literate in their native language, who speak a dialect that is different from the one in which the native language assessment is written, or who receive the majority of their instruction in English and thus have not been exposed to the academic vocabulary of their native language.

Changes: None.

Comment: None.

Discussion: Dissemination, through report cards, of clear and understandable data on student participation in and performance on State assessments is central to the NCLB Act and is the best management tool we have for improving schools. Upon the Department's own internal review of these regulations, the Secretary has determined that these regulations should help ensure that parents and the public are informed annually about the number of recently arrived LEP students exempted from State reading/language arts assessments.

Change: We have added new § 200.6(b)(4)(i)(C) to require States and LEAS to report on their report cards the number of recently arrived LEP students who are not assessed on the State's reading/language arts assessment.

Section 200.20 Making Adequate Yearly Progress

Comment: Several commenters recommended that the regulations permit States to include formerly LEP students in reporting the achievement of the LEP subgroup on State and LEA report cards required under section 1111(h) of the ESEA.

Discussion: The Secretary recognizes that the LEP subgroup is one whose membership can change from year to year as students who have attained English proficiency exit the subgroup and new students not proficient in English enter the subgroup. Because LEP students exit the LEP subgroup once they attain English language proficiency, school assessment results for that subgroup may not reflect the gains that LEP students have made in academic achievement. Recognizing this, the final regulations allow a State to include "former LEP" students within the LEP subgroup in making AYP determinations for up to two years after they no longer meet the State's definition for limited English proficiency. At the same time, however, it is important that parents and the public have a clear picture of the academic achievement of those students who are presently limited English proficient. Thus, the final regulations distinguish between including former LEP students in the LEP subgroup for assessment data reporting and including them in that subgroup when reporting AYP on State and LEA report cards.

Under the ESEA, in section 1111(h)(1)(C), and section 1111(h)(2)(B) as that section applies to an LEA and each school served by the LEA, information on subgroups is reported in two distinct ways. Under section 1111(h)(1)(C)(i, iii, iv, v, and vi) and section 1111(h)(2)(B) as that section applies to an LEA and each school served by the LEA, information is reported for all students and the students in each subgroup (race/ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged), regardless of whether a student's achievement is used in determining if the subgroup has made AYP (*i.e.*, reporting includes students who have not been enrolled for a full academic year, as defined by the State, and students in subgroups too small to meet the State's minimum group size for determining AYP). For reporting under the above-referenced provisions, former LEP students may not be included in the LEP subgroup because it is important that parents and the public have a clear picture of the academic achievement of students who are currently limited English proficient. On the other hand, section 1111(h)(1)(C)(ii) and section 1111(h)(2)(B), as that section applies to an LEA and each school served by the LEA, provide for a comparison between the achievement levels of subgroups and the State's annual measurable objectives for AYP in reading/language arts and mathematics (for all students, and disaggregated by race/ethnicity, disability status, English proficiency, and status as economically disadvantaged). For this section of State and LEA report cards, States and LEAs are reporting on how students whose assessment scores were used in determining AYP (*i.e.*, students enrolled for a full academic year) for reading/language arts and mathematics compare to the State's annual measurable objective for AYP. For reporting AYP by

subgroup, former LEP students may be included in the LEP subgroup.

Changes: Section 200.20(f)(2)(iii) has been changed to clarify the distinction between reporting assessment data and reporting accountability data on State and LEA report cards and to clarify that "former LEP" students may be included within the LEP subgroup only under section 1111(h)(1)(C)(ii) of the ESEA, and section 1111(h)(2)(B) of the ESEA as that section applies to comparable data reported on LEA report cards.

Comment: One commenter contended that § 200.20 should allow the State to include, in the LEP subgroup, those students who were LEP but who no longer meet the State's definition for up to three years instead of the two years proposed in the NPRM.

Discussion: Section 3121(a)(4) of Title III of the ESEA requires LEAs that receive Title III funds to monitor the progress of students served by Title III in meeting challenging State academic content and academic achievement standards for each of the two years after such students are no longer receiving Title III services. Because of this Title III requirement, States have already begun designing data collection systems to track students in this manner. The Secretary believes the final regulations should be consistent with the Title III provisions.

Changes: None.

Comment: One commenter recommended that States be required to include former LEP students in the LEP subgroup in determining whether a school or LEA has a sufficient number of LEP students to yield statistically reliable information under § 200.7(a).

Discussion: The regulations are designed to assist schools and LEAs that have a LEP subgroup of sufficient size (without including former LEP students) to yield statistically reliable information, as determined by the State, to demonstrate their progress with that subgroup by enabling those schools and LEAs to include the scores of former LEP students in AYP calculations for up to two years after the student exits the LEP subgroup. States that wish to include former LEP students in the LEP subgroup in determining whether a school or LEA has a sufficient number of LEP students to yield statistically reliable information under § 200.7(a) may do so.

Changes: None.

Comment: One commenter recommended that the Secretary clarify that, if States include former LEP students in AYP calculations for LEP subgroups, this action must be taken on a statewide basis.

Discussion: The Secretary expects each State to have a policy governing the inclusion of former LEP students in AYP calculations. A State may certainly establish and apply statewide a uniform policy requiring all LEAs to include the scores of former LEP students in their AYP calculations. However, the Secretary believes that a State should have the discretion to give LEAs the option, based on their individual circumstances, of deciding whether to include the scores of former LEP students in the LEP subgroup for AYP calculations. For example, an LEA with a small LEP population might decide it is not practical to disaggregate the scores of former LEP students for AYP purposes.

Changes: None.

Comment: One commenter recommended that the Secretary prohibit States from including recently arrived LEP students in the State's assessment participation rate if the State does not count the scores of these students in determining AYP.

Discussion: The Secretary believes that recently arrived LEP students should be counted as participants because they are taking the State's mathematics assessment and English language proficiency assessment, and they may be taking the State's reading/language arts assessment as well. A school or LEA should not be penalized in its participation rate if the scores of recently arrived LEP students are not included for determining AYP.

Changes: None.

Comment: A few commenters requested that the Secretary extend the flexibility in proposed § 200.20(f)(2) to students who were formerly classified as having a disability. The commenters specifically urged that the regulations be amended to allow the scores of students with disabilities who are no longer eligible for special education to be included, for up to two years, in the same manner that they allow for including the scores of former LEP students. The commenters believe that the circumstances prompting the proposed regulations for former LEP students are similar with respect to students with disabilities.

Discussion: On December 15, 2005, the Secretary published in the **Federal Register** a notice of proposed rulemaking (70 FR 74624) that would permit a State, in determining AYP for the students with disabilities subgroup, to include in that subgroup any student tested in the current year who had exited special education within the prior two-year period. The Secretary is currently considering the public comments she has received on this issue and will address it in response to the December 15 proposed rules.

Changes: None.

Comment: One commenter pointed out that a State could not take advantage of the flexibility provided in the regulations if its current data system does not include the number of years a student has been "formerly LEP." The commenter recommended that the regulations permit States to include all formerly LEP students in the LEP subgroup through 2005–2006, providing time for the data system to collect new data on the number of years a student has been "formerly LEP."

Discussion: Permitting States to include all former LEP students in the LEP subgroup through the 2005–2006 school year could significantly mask the achievement of the LEP subgroup by overweighting it with former LEP students (including those who have not been LEP for several years) and, thus, creating the potential for ill-advised decisions regarding appropriate instructional strategies for this group of students. A State that improves its data collection procedures to track former LEP students may take advantage of the flexibility as the data become available. Thus, in the first year, the State may include in the AYP calculations for the LEP subgroup the scores for former LEP students who have been determined to no longer be LEP for one year and, in the second year, include the scores of all former LEP students who have been determined to no longer be LEP for one and two years.

Changes: None.

Comment: None.

Discussion: Upon the Department's own internal review of these regulations, the Secretary believes it is important to clarify how States and LEAs may implement the flexibility related to including the scores of former LEP students in calculating and reporting AYP for the LEP subgroup. If a State or LEA decides to include the scores of former LEP students in determining AYP, that State or LEA must include the entire group of former LEP students in such AYP calculations. The regulations are not intended to permit States and LEAs to pick and choose which former LEP students to include, or to choose a subset of former LEP students, such as only former LEP students who score proficient or higher on State assessments. In other words, if a State or LEA chooses to take advantage of this flexibility and include the scores of former LEP students in calculating and reporting AYP, the State or LEA must include all such defined students.

Changes: We have modified § 200.20(f)(2)(ii) to clarify that, if a State

or LEA chooses to include the scores of former LEP students as part of the LEP subgroup for purposes of calculating and reporting AYP, it must include the scores of all students it defines as former LEP students.

General Comments

Comment: One commenter noted that States without a student-based data management system would have to develop such a system in order to obtain the data necessary to implement these regulations. The commenter further indicated that, because there are costs associated with the development of a student-based data management system, there are costs associated with implementing these regulations.

Discussion: The flexibility afforded by the final regulations is purely permissive. No State is required to exercise it and, thus, none is required to incur any additional costs as a result of these regulations.

Changes: None.

Comment: One commenter requested that the Secretary apply these regulations retroactively to AYP determinations from the 2002–03 school year. The commenter argued that schools should not be penalized for failing to make AYP if they would have made it under the new rules.

Discussion: The Secretary first announced the flexibility included in these regulations in a letter dated February 20, 2004, and in that letter permitted States to implement the flexibility provided in these regulations for AYP decisions based on 2003–2004 assessment data. Because identification for improvement depends on a school not making AYP for two consecutive years, a school or district would not be identified for improvement solely on the basis of the performance of its LEP subgroup, absent this flexibility, on the State's 2002–2003 assessments. Further, if a school or district did not make AYP for the LEP subgroup based on the 2003–2004 assessment with this new flexibility, the determination that the school or district did not make AYP based also on the 2002–2003 assessment was most likely appropriate.

Changes: None.

Comment: One commenter requested that the final regulations allow States to count former LEP students for the purposes of determining the amount of Title III funding a State will receive.

Discussion: The primary purposes of Title III of the ESEA are to ensure that students who are LEP, as measured against State English language proficiency standards, attain English language proficiency and develop high levels of academic attainment; to develop high-quality instructional programs for LEP students; and to assist States, LEAs, and schools to build and enhance their capacity to establish, implement, and sustain language instruction programs for LEP students. Former LEP students are, by definition, students who, as measured against State English language proficiency standards and assessments, have attained English language proficiency. Counting students who are no longer LEP for the purposes of determining Title III funding would be contrary to the targeted purposes of the Title III program. Furthermore, Title III of the ESEA includes explicit statutory instructions for how funding allocations to States are to be made.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those we have determined to be necessary for administering the requirements of the statute effectively and efficiently.

In assessing the potential costs and benefits of the final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (69 FR 35464). We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comments and Changes.*

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions only if States choose to implement the flexibility these regulations afford. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The amendments to § 200.6 contain information collection requirements. Under the Paperwork Reduction Act of 1995, the Department has submitted a copy of this section to the Office of Management and Budget (OMB) for its review. The burden hours associated with this data collection are estimated at 52 hours total, based on each State taking one hour to report these data in the appropriate form. The Department is requesting approval of these burden hours as a "new" information collection. However, the Department intends to eventually transfer these hours to the information collection covered under OMB Control Number 1810–0581.

This information collection relates to a change in the reporting requirements already required under Title I, Part A of the ESEA for States that voluntarily choose to take advantage of the flexibility afforded by this regulation. States and districts already collect the number of students exempted from State assessments, and report, on State and local report cards, the percentage of students not tested (Section 1111(h)(1)(C)(iii)), disaggregated by student category. The regulations would add a reporting category, to be reported on State and local report cards, for the number of students who were not tested because they were identified as LEP students who are recent arrivals to the United States.

Each of the 50 States, Puerto Rico, and the District of Columbia that wishes to take advantage of the flexibility related to recently arrived LEP students would need to report these data on SEA and LEA report cards.

There is no appreciable burden associated with the collection as SEAs and LEAs already report on student exemptions from State assessments on report cards. The cost for this collection is also minimal as it is a matter of adding to or recoding SEA and LEA test exemption collection instruments to include this newly available exemption option and adding that information to report cards.

In order to take advantage of the flexibility related to recently arrived LEP students, SEAs and LEAs would have to be able to, and would want to, account for and track separately the students to which this exemption would apply in order that those students are not miscounted as non-participants in the State's reading/language arts assessment for meeting the 95 percent participation requirement. We estimate annual reporting and recordkeeping burden for this collection of information

to average 1 hour for each of the 52 respondents.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. You may also send a copy of these comments to the Department's representative named in the **FOR FURTHER INFORMATION CONTACT** section of this document.

We consider your comments on this proposed information collection in:

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of this proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of response.

OMB is required to make a decision concerning the collection of information contained in this regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Juvenile Delinquency, Local educational agencies, Migrant labor, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: September 11, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. Amend § 200.6 as follows:
■ A. Revise the introductory text of the section;
■ B. Revise paragraph (b)(1)(i) introductory text; and
■ C. Add a new paragraph (b)(4).

The revisions and addition read as follows:

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed in accordance with this section.

* * * * *

(b) * * *

(1) * * *

(i) Consistent with paragraphs (b)(2) and (b)(4) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

* * * * *

(4) *Recently arrived limited English proficient students.* (i)(A) A State may exempt a recently arrived limited English proficient student, as defined in paragraph (b)(4)(iv) of this section, from one administration of the State's reading/language arts assessment under § 200.2.

(B) If the State does not assess a recently arrived limited English proficient student on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the State's reading/language arts assessment in a native language under section 1111(b)(3)(C)(x) of the Act.

(C) The State and its LEAs must report on State and district report cards under section 1111(h) of the Act the number of recently arrived limited English proficient students who are not assessed on the State's reading/language arts assessment.

(D) Nothing in paragraph (b)(4) of this section relieves an LEA from its responsibility under applicable law to provide recently arrived limited English proficient students with appropriate instruction to assist them in gaining English language proficiency as well as content knowledge in reading/language arts and mathematics.

(ii) A State must assess the English language proficiency of a recently arrived limited English proficient student pursuant to paragraph (b)(3) of this section.

(iii) A State must assess the mathematics achievement of a recently arrived limited English proficient student pursuant to § 200.2.

(iv) A recently arrived limited English proficient student is a student with limited English proficiency who has attended schools in the United States for less than twelve months. The phrase "schools in the United States" includes only schools in the 50 States and the District of Columbia.

* * * * *

■ 3. Amend § 200.20 as follows:
■ A. Revise paragraphs (a)(1) introductory text, (b) introductory text, and (c)(1) introductory text; and
■ B. Add a new paragraph (f).

The revisions and addition read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(a)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(f)(1) In determining AYP for a school or LEA, a State may—

(i) Count recently arrived limited English proficient students as having participated in the State assessments for purposes of meeting the 95 percent participation requirement under paragraph (c)(1)(i) of this section if they take—

(A) Either an assessment of English language proficiency under § 200.6(b)(3) or the State's reading/language arts assessment under § 200.2; and

(B) The State's mathematics assessment under § 200.2; and

(ii) Choose not to include the scores of recently arrived limited English proficient students on the mathematics assessment, the reading/language arts assessment (if administered to these students), or both, even if these students have been enrolled in the same school or LEA for a full academic year as defined by the State.

(2)(i) In determining AYP for the subgroup of limited English proficient students, a State may include, for a period of up to two years, the scores of students who were limited English proficient but who no longer meet the State's definition of limited English proficiency.

(ii) If a State, in determining AYP for the subgroup of limited English proficient students, includes the scores of the students described in paragraph (f)(2)(i) of this section, the State must include the scores of all such students, but is not required to—

(A) Include those students in the limited English proficient subgroup in determining if the number of limited English proficient students is sufficient to yield statistically reliable information under § 200.7(a);

(B) Assess those students' English language proficiency under § 200.6(b)(3); or

(C) Provide English language services to those students.

(iii) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(A) A State may include the scores of former limited English proficient students as part of the limited English proficient subgroup for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient students as part of the limited English proficient subgroup for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students as part of the limited English proficient subgroup in reporting any other information under section 1111(h) of the Act.

[FR Doc. 06–7646 Filed 9–12–06; 8:45 am]

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H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280

Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

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